

ASSET MAINTENANCE SCOPE OF SERVICES
SUMMARY OF OPTIONS

- A Contract includes Interchanges, Crossroads, and Ramps (p)
- B Contract includes overpasses, underpasses, and approach roadways (p)
- C Contract includes open channel waterways, canals, ditches, etc. (p)
- D Contract includes stormwater management and mitigation areas (p)
- E MRP Performed by Department (p)
- EE Highway Lighting (p)
- F Permit Processing, Inspection, Coordination, and Administration (p)
- G RCI Collection and Administration performed by Contractor (p)
- H (NOT INCLUDED) Rest Areas, Welcome Centers, And Wayside Parks (p)
- I (NOT INCLUDED) Rest Area Security (p)
- K (NOT INCLUDED) Road Ranger Service (p)
- L (NOT INCLUDED) Rest Area utility bills (p)
- M (NOT INCLUDED) Welcome Center utility bills (p)
- N (NOT INCLUDED) Roadway Utility Bill Payment (p)
- O (NOT INCLUDED) Weigh Station Maintenance (p)
- P (NOT INCLUDED) Contractor pays all Weigh Station utility bills (p)
- Q Overlane Sign Structure Inspection and Maintenance (p)
- R Inspection and Maintenance of all High Mast Light Poles (p)
- S (NOT INCLUDED) Movable Bridge Inspection (p)
- T Non-movable Bridge Inspection (Local Bridge excluding) (p)
- U (NOT INCLUDED) Movable Bridge Maintenance (p)

V Fixed (Non-Movable) Bridge Maintenance and Repair (p)

W (NOT INCLUDED) Movable Bridge Tending and Preventive Maintenance (p)

X (NOT INCLUDED) Movable Bridge utility bills (p)

Y (NOT INCLUDED) Traffic Signal Maintenance (p)

Z Contractor performs Traffic Operation Work Orders (D-6 Method (\$25k)) (p)

ZZ4 (NOT INCLUDED) Inmate Labor from the Department of Corrections (p)

ZZ5 (NOT INCLUDED) Intelligent Transportation Systems (p)

ZZ6 Attachments I-III (p)

ZZ7 Payout Schedule - Non-Standard (p)

SCOPE OF SERVICES

ASSET MAINTENANCE CONTRACT

CONTRACT ADMINISTRATION

Contract Number: E6I97-R0

Financial Project Number (s): 430081-1-72-01, 430080-1-72-02, 430081-3-72-01,
435598-1-72-01, and 435599-1-72-01

OBJECTIVE

This performance-based contract requires the inspection, management and performance of the maintenance of all components of the transportation facility as identified herein. All such maintenance activities the Department's Maintenance Division formerly performed within the limits of this contract are now to be performed by the Contractor, unless otherwise exempted in this contract. Rather than the Department directing specific work as in most traditional maintenance contracts, this performance-based contract requires the Contractor to continually produce a quality product. The Department will continually evaluate the Contractor's quality of work performed and if applicable rules and procedures were followed to achieve results. The Department is entrusting the Contractor to care for and maintain select roadways, structures, and facilities of Florida's state roads and fully expects the Contractor to take pride in performing a high level of maintenance. The continual quality of the maintenance of the roadways, structures, and facilities will be a direct reflection, under public scrutiny, of the quality and integrity of the Contractor. The roadways, structures, and facilities included in the scope of this contract are as follows:

Management of all assets w/in the Department's Right-of-Way as shown in the Maintenance Maps along:

- I-95 (SR-9A) from SR-5/US-1 (South Dixie Highway) to Miami-Dade/Broward County line
- I-395 from NW 7th Ave. to west end of west MacArthur Bridge (Limited Access)
- A-1-A (MacArthur Cswy) from west end of west MacArthur Bridge to east MacArthur Cswy Bridge
- SR-826 (Palmetto Expressway) from SR-5 / US-1 (South Dixie Highway) to SR-7 (NW 2nd Avenue)
- I-75 from just east of SR 826 (Palmetto Expressway) to Miami-Dade/Broward County Line
- SR-970 (Downtown Connector) from I-95 to SE 2nd Avenue
- I-195 (Julia Tuttle Causeway) from just west of I-95 to Alton Road
- SR-913 (Rickenbacker Causeway) from I-95 to Key Biscayne Toll Plaza
- Golden Glades Interchange

1. GENERAL REQUIREMENTS

1.1 Current Standards and Subsequent Updates

Perform all work to current Department Standards and Specifications throughout the contract duration, as may be updated throughout the life of the contract. Inspect, manage and maintain all assets within the project limits as identified in this scope, perform work that is consistent with the Department's maintenance practices, and produce end results in accordance with Contract Documents in effect at the time of the performance of any work. Obtain the complete, up-to-date list of Contract Documents from the Office of Maintenance Website at <http://www.dot.state.fl.us/statemaintenanceoffice/AMContractDocuments.shtm>. All of the Contract Documents listed at this website are incorporated by reference as a part of this contract.

1.2 Contract Length

The initial Contract term is 7 years with a renewal option for one or more additional terms with the combined length of all renewal terms not to exceed the length of the original term of the contract. Renewals will be made at the sole discretion and option of the Department and must be agreed upon in writing by both parties. If the Department elects to renew, the Department will negotiate with the Contractor an adjustment factor to be applied to the original annual contract amount. The adjustment factor may be positive, negative, or zero. If negotiations do not lead to a mutually agreed upon adjustment factor, the contract shall not be renewed. The renewed contract amount will be calculated by applying the adjustment factor to the original contract amount, then adjusting for supplemental agreements as appropriate.

Renewal is contingent upon the availability of funds, satisfactory performance of the Contractor, and other factors as determined by the Department.

1.3 Invoicing and Compensation

This is a lump sum contract. Invoice the Department monthly according to the monthly amounts shown in payout schedule. Breakdown the monthly invoice by maintenance area for all work units completed for each Maintenance Management System (MMS) activity number.

1.4 Organizational Structure

Upon contract execution, provide a detailed organizational structure. Clearly define the responsibilities of each position identified in the organization structure. Provide qualifications of all personnel. Throughout the contract duration, submit all changes to organizational structure or position responsibility to the Department.

Decisions regularly require engineering judgment that may affect public health and safety. These decisions require the services of a Professional Engineer registered in the State of Florida. Identify at least one (1) individual licensed as a Professional Engineer in the State of Florida to perform these services. Identify a person in responsible charge of the contract who has the ability to instill public confidence and can responsibly act as a representative of the State of Florida Department of Transportation.

1.5 Performance Expectations and Evaluation

Inspect, manage and maintain the roadways, structures, and facilities as identified in the Scope uniformly and consistently throughout the contract period by meeting the performance specifications/measures established in this scope. The Department will evaluate Contractor performance in two ways: 1) by comparing actual work performance to the performance criteria established within this scope, and 2) by semiannually grading the Contractor according to the ***Performance Based Contracting*** Procedure. Unsatisfactory performance of work or failure to perform in accordance with the Contractor's technical proposal or other contract documents will affect the Contractor's semiannual grade and may further result in contract default.

1.6 Partnering

For this Contract, a non-bid pay item has been established for Partnering in the amount of \$10,000. The objective of partnering is to establish a partnership charter and action plan between the Contractor, the Department and other parties associated with this Contract.

1.7 Contractor Responsibilities

Review and confirm for validity the data contained on the project CD, which is provided by the Department in conjunction with the Request for Proposal (RFP). Use the supplied project CD to assist in developing a complete understanding of all quantities and workloads pertaining to this scope of work.

Continually monitor all Department policies, procedures, specifications, and other Contract Documents for changes and updates. Be prepared to comply with any revisions.

Manage the maintenance of all assets identified in this scope. Tasks include work needs assessment; resource management; work activity planning and execution; and quality control performance to ensure work complies with contractual requirements. Develop an annual work plan to ensure the desired maintenance is performed.

Perform Routine and Periodic maintenance activities at a frequency that ensures uniform and consistent compliance with the Maintenance Rating Program (MRP) criteria, the required maintenance rating level, and any other established requirements of the Department. Research maintenance activity numbers, activity descriptions, and units of measure in the Department's ***Maintenance Cost Handbook***.

Take proper health and safety measures to ensure safety for the traveling public, Department employees, Contractor employees, and Subcontractor employees.

Manage and coordinate existing Department contracts within the limits of this contract until expiration of the Department contracts (Attachment I). Existing Department contracts will continue until money exhaustion or time expiration on the contract, whichever comes first, or as otherwise indicated on Attachment I. Document any instances of poor performance by the existing Department Contractor. If the Department prematurely terminates any existing contract, the Department will compensate the Asset Maintenance Contractor for assuming the

unanticipated workload remaining on the terminated contract.

Comply with current lane closure restrictions, requirements, and individual lane closure analysis results. In some locations this may require nighttime work. Lane closure restrictions are subject to change due to updated traffic counts or various other events. Work with Department staff to coordinate lane closures during special events.

Develop and implement a Customer Service Resolution Plan. Maintain a customer service log detailing complaints and requests and the resolution of the items contained in the log. Include Customer name, contact information, and the date complaint was received in the log.

Before performing any non-standard repairs or implementing any innovative ideas, submit the non-standard repair or innovative idea to the Department for review and comment. The Contractor shall fully accept the risk and responsibility of success or failure for the proposed innovation. The Department reserves the right to deny the implementation of such innovation in the Department's best interest.

Purchase (via monthly invoice deduction) all needed sign panels from the State Sign Shop in Lake City using the statewide process for requesting and receiving finished sign panels; or, as an alternative, obtain sign panels from a source of the Contractor's choosing. Before installation, ensure sign panels meet minimum design requirements. Maintain a record of all Department provided sign panels.

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned.

Monitor and report to the Department all DBE utilization properly detailed as required in Specifications.

Manage the district Adopt-A-Highway as required by Chapter 403.4131, ***Florida Statutes***.

Consider participation in the Department's Youth Work Experience Program, as provided by Chapter 334.351, ***Florida Statutes***.

Provide any lists, summaries, logs, reports, or other documents to the Department for review as requested.

Pay all fines, fees, and penalties levied to the Department by any Governmental Agency resulting from negligent maintenance.

Pay all tolls required for usage of roads and bridges.

1.8 Department Responsibilities

The Department will provide all potential Contractors (bidders) with a project CD containing a variety of data and information about the roadways, structures, and facilities within the limits of this contract. Although the information on the CD is not complete, it will be useful in determining the extent of expected maintenance activities. The Department will place the following items on the project CD:

- (a) Historical Contract Reports
- (b) Historical MRP Reports
- (c) Summary Spreadsheet for MRP Workloads
- (d) RCI Converted Inventory
- (e) Structure Information
- (f) In-House-Crew Unit Cost Reports

Upon request, the Department will provide finished sign panels to the Contractor for sign maintenance and repair on the State Highway System within the project limits. The Department will verify that the Contractor has made a deduction from the Contractor's monthly invoice for the cost of each sign panel obtained from the Lake City Sign Shop.

Annually, the Department will provide additional compensation to the Contractor via Supplemental Agreement or Unilateral Payment if the Contractor experiences a combined substantial economic impact during the previous year due to compliance with any of the following four (4) possible occurrences.

- (a) A change to statewide maintenance programs or practices.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specs, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Increased maintenance due to the construction of roadways, structures, and facilities that were not included in the Department's Work Program at the time of the Contractor's proposal due date or renewal date.
- (d) Increased maintenance due to the transfer of ownership to the Department of non-state roadways, structures, and facilities within the contract limits.

A substantial economic impact is defined as documented financial burden on the Contractor exceeding five percent (5%) of the annual contract amount. If additional compensation is warranted, the Department will compensate only for the value of economic impact beyond the five percent (5%) threshold. The five percent (5%) is not cumulative year to year; it is reset each anniversary of contract start date. The Contractor will not receive any additional compensation for maintenance of projects scheduled in the Department's Work Program at the time of the proposal due date or renewal dates.

Similarly, the Department will reduce payment to the Contractor if the Contractor experiences a combined substantial economic savings during the previous year due to occurrence of any of the following four (4) possibilities:

- (a) A change to statewide maintenance programs or practices.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specs, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Reduced maintenance due to the elimination or planned destruction of roadways, structures, and facilities.
- (d) Reduced maintenance due to the transfer of ownership of Department-owned roadways, structures, and facilities to other non-Department entities.

A substantial economic savings is defined as a cost savings exceeding five percent (5%) of the annual contract amount. If cost savings are identified, payment to the Contractor will be reduced only for savings greater than the five percent (5%) threshold. The five percent (5%) is not cumulative year to year; it is reset each anniversary of contract start date.

2. EMERGENCY MANAGEMENT

2.1 General

The Department categorizes Emergency Management into two classifications: "Governor Declared Emergencies" and "Other Emergencies". For Governor Declared Emergencies, perform pre-event preparation and provide initial response post-event to protect the traveling public from grievous hazards created by the incident/event. For Other Emergencies, perform all aspects of responding to the incident/event, including pre-event preparation, post-event initial response, and post-event cleanup and repair. For both classifications of Emergency Management, perform the following six (6) activities before every foreseeable Emergency Management incident/event:

- (a) Contact vendors and subcontractors to verify quantity, availability, and priority of appropriate equipment and personnel (e.g. MOT devices, variable message boards, chainsaws, sand spreaders, etc.). Develop a complete up-to-date list of equipment resources and staging locations and of all stockpiled materials and their locations.

(b) In case of possible area evacuations, prepare for implementation of one-way evacuation plans including the pre-staging of necessary one-way evacuation resources.

(c) If directed by the Department implement one-way evacuation and remove one-way evacuation devices when complete.

(d) Secure and lockdown all structures and facilities covered under this contract.

(e) In preparation for high winds, rains, and other impending elements, secure all existing worksites associated with this contract.

(f) Lower all high mast lights within the projected path of a hurricane where wind speeds are projected to be category two or higher at location of high mast lights, or as otherwise directed by the Department. Lower lights to within ten (10) feet of the ground. If the lowered position of lights places them at risk of adjacent tree damage, place lights as low as possible while avoiding tree damage risk. Do not lower high mast lights on routes that are expected to be used for one-way evacuation.

If high mast lighting has been lowered, repaired, or raised due to preparation/reaction to storm events, submit a separate informational invoice detailing the cost of such lowering, repairing, and raising of the high mast lights. Show the high mast lighting costs by maintenance area, by Financial Project Number, and by activity (lower, repair, raise). Retain all documentation required for the Department to apply for Federal Reimbursement for this activity.

For any one-way evacuation activities performed to prepare/react to storm events, submit a separate informational invoice detailing the cost of such one-way evacuation activities. Show the one-way evacuation costs by maintenance area, by Financial Project Number, and by activity. Retain all documentation required for the Department to apply for Federal Reimbursement for one-way evacuation activities.

For any activities associated with securing bascule bridges in preparation/reaction to storm events, submit a separate informational invoice detailing the cost of such activities. Show the costs to secure bascule bridges by maintenance area, by Financial Project Number, and by activity. Retain all documentation required for the Department to apply for Federal Reimbursement for these activities.

Unless otherwise noted in this contract, the Department will not provide additional compensation to the Contractor through this contract for any Emergency Management activities, including the six activities described above.

For all Emergency Management activities, the Department reserves the right to take control of the incident/event and/or perform recovery work with its own or other contracted forces when the Department determines it is in the Department's best interest to do so.

For any single incident/event, the Contractor's financial responsibility for repair/reconstruction

costs is capped at \$1,000,000; the Department will reimburse the Contractor for repair/reconstruction costs in excess of this amount. The Department will not provide reimbursement if the incident/event was caused or enhanced, in part or in full, by the Contractor's negligence or failure to comply with contract obligations.

2.2 Emergency Management Plan

Know the applicable District Comprehensive Emergency Management Plan as well as the FHWA and FEMA guidelines for federal reimbursement. Ensure compliance with all State and Federal Emergency Management Requirements. Administer all response and recovery efforts in accordance with these documents. Develop an Emergency Management Plan that sufficiently replicates the intent of the District's Comprehensive Emergency Management Plan and incorporate this plan with the Technical Proposal. Include details in the Emergency Management Plan including, but not limited to:

- procedures for incident/event management
- agency & public notifications
- assurance of motorist safety
- handling of hazardous waste
- coordination with Law Enforcement and other appropriate agencies
- traffic control
- coordination with the Department and other agencies to establish or implement pre-established detour routes
- maintenance of detour routes
- making emergency repairs
- debris removal
- evacuation/ one-way evacuation response
- submission of incident/event reports
- plan for compliance with the Open Roads Policy
- detailed organizational structure with the functions, qualifications, experience level, and contact information of staff assigned to respond to incidents/events

Comply with all Department plans and with all Local, State, and Federal laws and regulations

concerning evacuation routes and the handling and disposal of hazardous waste. Update the Emergency Management Plan in April of each year by engaging in an iterative process of discussion between the Department and the Contractor whereby lessons learned from past experience can be implemented for future use. Prior to the occurrence of any incidents/events, ensure an approved Emergency Management Plan is in effect and be prepared to act upon that plan.

2.3 Specific Contractor Responsibilities for Governor Declared Emergencies

Governor Declared Emergencies are incidents/events that prompt the Governor of Florida to declare a State of Emergency in response to the incident/event. Governor Declared Emergencies will most commonly be major hurricanes and other natural disasters, but can include smaller natural disasters/events/storms (Acts of God), collisions with structures and related components, and incidents/events resulting from human interactions.

If directed by the Department in writing, perform the following three (3) Pre-Event activities and separately track and invoice the Department for associated costs. The Department will compensate the Contractor for their direct costs of performing these three (3) Pre-Event activities as described in the Department's written directions to the Contractor:

1. Supplement Road Ranger Service Patrols and provide fuel assistance to stranded motorists.
2. Provide additional security at Rest Areas and Welcome Center facilities.
3. Provide additional portable rest room facilities at Rest Areas, Weigh Stations, Welcome Centers, Toll Plazas, Office Buildings and other locations as directed by the Department.

Perform the following six (6) Post-Event activities. The Department will not provide additional compensation to the Contractor for the performance of these six (6) Post-Event activities:

1. Search all roadways, structures, and facilities covered by this contract for grievous hazards (roadway washouts/cave-ins, downed or exposed electrical lines, non-traversable bridges, structurally compromised buildings, etc.). This may include clearing some debris in order to access these hazardous areas. Minimal debris clearing required to access hazardous areas will not be considered first-push roadway clearing.
2. Immediately respond to perform traffic control, set up safety devices, and layout established or improvised detour routes in order to protect the traveling public from grievous hazards created by the incident/event. When detour routes are required due to an incident/event occurring on a roadway and/or structure covered by this contract, manage and maintain the entire detour route within the State of Florida, even if the route extends onto roadways and/or structures not covered by this contract (state or non-state). For portions of a detour route extending outside Florida, coordinate detour setup and maintenance with the appropriate State.
3. Notify the Department's designated contact person immediately upon occurrence of all

major incidents/events and immediately upon road closure for all roadway and/or structure closures exceeding one (1) hour. Notify the Department again upon roadway and/or structure reopening.

4. For high mast lighting, inspect, perform any minor repairs, and raise all lighting back to their original position as directed by the Department. “Minor repairs” is defined as repairs not eligible for Federal reimbursement.
5. Inspect, unlock, and perform any minor repairs to all bascule bridges. “Minor repairs” is defined as repairs not eligible for Federal reimbursement.
6. Assist the Department in performing damage assessment reviews of bridges, overhead sign structures, and high mast light poles per the ***Damage Assessment Review Guidelines***.

Do not perform first-push activities, debris removal, cleanup, or federally reimbursable activities not listed above; the Department will take responsibility for performing these activities. All other work activities necessitated by a Governor Declared Emergency incident/event shall remain the responsibility of the Contractor and shall be managed according the applicable performance criteria established elsewhere in this contract.

2.4 Specific Contractor Responsibilities for Other Emergencies

Other Emergencies are incidents/events that do not prompt the Governor of Florida to declare a State of Emergency in response to the incident/event. Other Emergencies will most commonly be traffic crashes, guardrail hits, severe potholes, debris within travel lanes, attenuator hits, roadway shoulder wash-outs, roadway cave-ins, facility damage and downed light poles but can include natural disasters/events/storms (Acts of God), collisions with structures/facilities and related components, and incidents/events resulting from human interactions.

Respond and deploy resources according to the goals established in the ***Open Roads Policy***. Arrive on-site, prepared to take necessary action with necessary manpower and emergency response equipment. Working hours referenced under the Department responsibilities in the ***Open Roads Policy*** are defined as Monday through Friday 7:00 am to 5:30 pm. Be available to relieve Law Enforcement personnel of traffic control functions within fifteen (15) minutes of arriving onsite.

Manage all aspects of traffic control related to an incident/event, including coordination with Governmental agencies when incidents/events spill over onto roadways and/or structures not covered by this contract. When detour routes are required due to an incident/event occurring on a roadway and/or structure covered by this contract, manage and maintain the entire detour route, even if the route extends onto roadways and/ or structures not covered by this contract (state or non-state). Notify the Department’s designated contact person immediately upon occurrence of all major incidents/events and immediately upon road closure for all roadway and/or structure closures exceeding one (1) hour. Notify the Department again upon roadway and/or structure reopening.

2.5 Recovery of Costs, Reimbursement and Coverage for Other Emergencies

When an incident/event causes damage to any Department roadway, structure, facility or property (hereinafter collectively referred to as Property), which is subject to the terms of this Agreement, the Department authorizes the Contractor to pursue recovery against any responsible party for reimbursement of costs incurred by the Contractor in accordance with this agreement (hereinafter Costs). Certain Property (assets) of the Department is insured by the Insurance Company under the State of Florida, Department of Transportation's Bridge, Property and Business Interruption Insurance Program (Insurance Program). The following procedures and terms shall apply to the recovery of Costs incurred by the Contractor, Reimbursement by the Department and Coverage by the Insurance Company (as defined herein).

Upon learning that damage has been caused to Department Property covered by this agreement the Contractor will immediately notify the Department Project Manager and Department Claims Attorney (Office of the General Counsel) who will confirm whether the Property is an insured asset. The Department shall notify the Insurance Company.

A. The damaged asset is not insured under the Insurance Program (or the FDOT does not make a claim on the insurance coverage) and Costs are equal to or less than \$1,000,000.

1. The Contractor is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Property to the extent permitted by law. The Department will assist the Contractor as necessary and will confirm the Contractor's authorization to pursue recovery. The Contractor will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities.

B. The damaged asset is not insured under the Insurance Program (or the FDOT does not make a claim on the insurance coverage) and Costs are in excess of \$1,000,000.

1. In this situation the Department may be responsible to reimburse the Contractor for any Costs incurred in excess of \$1,000,000. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the Contractor in excess of \$1,000,000 (hereinafter Reimbursement). The Department and Contractor agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement from the responsible parties, and not to execute any documents or take any actions which would impair or limit the other's right to recovery. The Department and Contractor may enter into an agreement for sharing attorney's fees and litigation costs. The Department and Contractor agree to share any recovery on a pro-rata basis based upon their respective Costs and Reimbursement, in accordance with Florida law, unless otherwise agreed to in a separate writing.

C. The damaged asset is insured under the Insurance Program (and FDOT makes a claim for insurance coverage) and Costs are equal to or less than \$1,000,000.

1. In this situation the Insurance Company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under

the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the Contractor. The Contractor is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Property to the extent permitted by law. The Department will assist the Contractor as necessary and will confirm the Contractor's authorization to pursue recovery. The Department and Contractor agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any action which would impair or limit the others' right to recovery. The Department, Contractor and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, Contractor and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

D. The damaged asset is insured under the Insurance Program (and FDOT makes a claim for insurance coverage) and Costs are in excess of \$1,000,000.

1. In this situation the Department may be responsible to reimburse the Contractor for any Costs incurred in excess of \$1,000,000. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the Contractor in excess of \$1,000,000 (hereinafter Reimbursement) and the insurance company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the Contractor. The Contractor is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Property to the extent permitted by law. The Department will assist the Contractor as necessary and will confirm the Contractor's authorization to pursue recovery. The Department and Contractor agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any actions which would impair or limit the others' right to recovery in accordance with Florida law. The Department, Contractor and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, Contractor and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

In paragraphs 5C and 5D above, the Contractor shall submit all proposed settlement documentation (settlement agreement, release and order of dismissal) for review and approval by the Office of the General Counsel prior to execution. Approval by the Department shall not be unreasonably withheld.

E. Failure to coordinate and cooperate in pursuing recovery, or impairment or limitation of a party's right to recovery.

1. With regard to paragraphs 5A, B, C and D, above, if either the Department

or Contractor fails to coordinate and cooperate in the pursuit of any recovery under these provisions or impairs or limits the lawful recovery of the other or the Insurance Company, it will be liable to the other and the Insurance Company for reasonable attorneys' fees and costs incurred in compelling coordination and cooperation or correcting any impairment or limitation to its lawful recovery. The Contractor shall not be entitled to any Coverage which may be available to the Department from the Insurance Company.

Although the Contractor is responsible for repairing damage resulting from an act that is officially declared by the State of Florida as an "act of terrorism", the Department will compensate the Contractor via Supplemental Agreement or Unilateral Payment for "act of terrorism" damage repair costs.

3. ASSET MAINTENANCE PERFORMANCE MEASURES

MRP SCORES	
MRP notes: The department will hold the retainage withheld from MRP periods 1 & 2 until the Department calculates the final annual rating. If the final annual calculated deduction is less than the total accumulated retainage for the fiscal year, the balance of the retainage will be paid to the Contractor. If the final annual calculated deduction exceeds the total accumulated retainage for the fiscal year, the balance will be deducted from the Contractor's payment. All deductions withheld from the Contractor and all retainage refunds to the Contractor will occur through adjustments to the next appropriate monthly invoice amount.	
Deficiency Identification	Deduction/Retainage
a. Failure to meet overall MRP score requirements (Periods 1 & 2)	Retain one half percent (.5%) of one-third of the annual contract amount for each MRP point below procedural requirements for overall MRP score
b. Substandard MRP for individual elements (Periods 1 & 2)	Retain one quarter percent (.25%) of one-third of the annual contract amount for each MRP point below procedural requirements for each element rating
c. Substandard MRP for individual characteristics (Periods 1 & 2)	Retain one eighth percent (.125%) of one-third of the annual contract amount for each MRP point below procedural requirements for each characteristic rating
d. Failure to meet overall MRP score requirements (Final Annual Rating)	Deduct one half percent (.5%) of the annual contract amount for each MRP point below procedural requirements for overall MRP score
e. Substandard MRP for individual elements (Final Annual Rating)	Deduct one quarter percent (.25%) of the annual contract amount for each MRP point below procedural requirements for each element rating
f. Substandard MRP for individual characteristics (Final Annual Rating)	Deduct one eighth percent (.125%) of the annual contract amount for each MRP point below procedural requirements for each characteristic rating
PERFORMANCE CRITERIA NOTES:	
For ALL performance measures identified in all charts found in this scope, the "Time Allowed/Criteria" is PER APPLICABLE PROCEDURE . If the applicable procedure	

is non-specific for time allowed or criteria, then use the “Time Allowed/Criteria” given in the applicable chart.

For all times allowed in all charts found in this scope, the District Maintenance Engineer/Administrator may grant a time extension for unusual circumstances if the extension is requested during the original time period allowed.

All deductions withheld from the Contractor will occur through adjustments to the next monthly invoice amount.

GUARDRAIL

Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to perform timely inspections	Per Procedure, Manuals, Codes, etc.	\$500 per day per delinquent inspection
b. Failure to timely submit Inspection Sheets/Reports	Due within 15 days after completion of inspection	\$100 per day per delinquent report
c. Failure to make repairs identified in Inspection Reports	Within 30 days of identification	\$500 per day per guardrail
d. Failure to make temporary safety repairs resulting from incidents	Must secure with proper Maintenance of Traffic (MOT) before leaving the site	\$1,000 per day per guardrail
e. Failure to make permanent repairs resulting from incidents	Repair within 10 calendar days of Incident	\$1,000 per day per guardrail

CRASH CUSHIONS

Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to perform timely inspections	Per Procedure, Manuals, Codes, etc.	\$500 per day per delinquent inspection
b. Failure to timely submit Inspection Sheets/Reports	Per Procedure, Manuals, Codes, etc.	\$100 per day per delinquent report
c. Failure to make repairs identified in Inspection Reports	Within 30 days of identification	\$500 per day per crash cushion
d. Failure to make temporary safety repairs resulting from incidents	Must secure with proper MOT before leaving the site	\$1,000 per day per crash cushion
e. Failure to make permanent repairs resulting from incidents	Repair within 5 calendar days of Incident	\$1,000 per day per crash cushion

SIGNS

Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to perform timely Inspections	Per Procedure, Manuals, Codes, etc.	\$500 per day per delinquent inspection

b. Failure to timely submit Inspection Sheets/Reports	Due within 15 days after completion of inspection	\$100 per day per delinquent report
c. Failure to make repairs identified in Inspection Reports	Per Procedure, Manuals, Codes, etc.	\$500 per day per sign assembly
d. Failure to replace missing signs and signs downed by incidents	Per Procedure, Manuals, Codes, etc.	Permanent regulatory and warning signs \$2,000 per day per sign assembly. Temporary signs \$100 per day per sign assembly. Permanent signs \$500 per day per sign assembly
CLEAR ZONE OBSTRUCTIONS		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to temporarily secure reported or discovered clear zone obstructions	Must respond within 1 hour & secure with proper MOT before leaving the site	Response - \$100 per hour per location Secure - \$1,000 per day per location
b. Failure to remove or correct clear zone obstructions	Within 7 days	\$1,000 per day per location
BARRIER WALL		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to replace or repair damaged barrier wall	Secure with proper MOT before leaving the site. Permanent Repairs within 7 days of notification.	Secure MOT \$1,000 per day per location Permanent repairs \$1,000 per day per location
CUSTOMER SERVICE RESOLUTION		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to contact customer	Contact customer within 24 hours	\$500 per day per customer
b. Failure to resolve customer service request to the satisfaction of the Department	Resolve within 2 weeks of customer contact	\$500 per day per customer request
EMERGENCY RESPONSE		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to properly respond to incidents/events as required in Emergency Management section of this scope or according to the goals	Per Emergency Management section requirements established in this scope and in the Open Road Policy.	\$1,000 per hour, prorated, per incident/event

established in the Open Road Policy.		
EMERGENCY DEBRIS REMOVAL (INCLUDING DEAD ANIMALS)		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to promptly and properly remove and dispose of emergency debris	Per Emergency Response for Debris Removal Specifications (SMSP)	\$500 per day per incident
GRAFFITI		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to promptly remove or cover graffiti	Remove or cover graffiti within 36 hours of discovery	\$1,000 per day per roadway mile
SUBMISSION OF DEPARTMENT REQUESTED DOCUMENTS		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Upon Department request, failure to submit any documents the Contractor is required to maintain	Submit document by the end of the business day following the day of the Department’s request	\$100 prorated per business day per requested document
DEPARTMENT POLICIES AND PROCEDURES		
Deficiency Identification	Deduction	
a. Violation of any Department procedures, policies, handbooks, or any other contract document	\$500 per occurrence of violation	
CONTRACTOR’S TECHNICAL PROPOSAL		
Deficiency Identification	Deduction	
a. Deviating from any claims, promises, statements, guarantees, or other assurances made within the Contractor’s original Technical Proposal	\$500 per occurrence of violation	

INTERCHANGES, CROSSROADS, AND RAMPS

The scope of this contract includes interchanges, crossroads and ramps as defined here:

- a) For ramped interchanges that include two or more state roads, be responsible for all ramps and other roadways that are numbered as subsections to the roadway sections covered by this contract. Responsibility limits of the subsection roadways are defined by the limits established in corresponding Straight-Line Diagrams (SLDs).
- b) For ramped interchanges between state roads and non state roads, be responsible for all ramps that connect to the state roadways covered by this contract up to the right-of-way (ROW) lines of the mainline state roadways or their ramps, whichever extends farther.
- c) For at-grade intersections, be responsible for intersecting roadways up to the ROW line of the roadways covered by this contract.

These limit definitions apply unless agreements exist between the Department and other entities that indicate otherwise, or unless otherwise shown by the Department through supplemental description.

Within 60 days of contract start date, submit aerial graphical depictions of the limits of all intersections within the contract limits that can be described by (a) above. The graphical

depictions shall clearly define and display all areas covered under the scope of this contract. The submittal will be reviewed by the Department for agreement and approval. If the Department does not agree with the limits shown in the depictions, continue to research, edit and resubmit until both parties agree to the limits.

OVERPASSES, UNDERPASSES, AND APPROACH ROADWAYS

The scope of this contract includes overpasses, underpasses, and approach roadways within limits of right-of-way of the roadways covered by this contract. This inclusion does not apply to a particular overpass, underpass, or approach roadway if it is maintained by other entities through agreement with the Department, or if shown otherwise by the Department through supplemental description, or if Department policy directs otherwise.

OPEN CHANNEL WATERWAYS

Contract includes waterways, canals, ditches, outfalls, and intermittent waterway canals to the right-of-way line including compliance with any permit requirements.

STORMWATER MANAGEMENT AND MITIGATION AREAS

Contract includes stormwater management and mitigation areas associated with the highway corridor including compliance with all permit requirements.

MAINTENANCE RATING PROGRAM PERFORMED BY THE DEPARTMENT

Achieve and maintain a Maintenance Rating Program (MRP) rating as required in Department procedures for all elements and characteristics. Use the criteria established in Department procedures to constantly evaluate the level of maintenance attained to ensure a uniform and consistent level of maintenance at all times.

The Department will perform a complete MRP rating three (3) times per year using the criteria outlined in the MRP Handbook. The Department will randomly generate locations to be rated each period. The Department will calculate the MRP scores for the Contractor. The Department may perform interim MRP ratings for specific characteristics as quality control checks of the Contractor and to ensure that the Contractor is consistently maintaining the state highway system. The Department will use the randomly generated points when performing interim MRP checks. The Department will consider these interim rating scores when the Department determines the Contractor's semiannual grades, as per Performance Based Contracting Procedure.

Two (2) business days in advance of scheduled MRP evaluation, the Department will invite the Contractor to accompany the Department MRP team in their review. The Contractor may accompany the Department's MRP team with a maximum of two trained MRP team members.

If the Contractor does not attend the MRP evaluation, they cannot contest the MRP scores. Upon encountering any disagreement associated with an MRP evaluation, attempt to resolve the dispute in the field with the Department MRP team. If no resolution can be reached in the field, both parties will document the dispute and elevate the issue to the Department's Contract Administrator. Failure to reach resolution of the dispute at this level will result in further escalation through the District Maintenance Administrator/Engineer and finally up to the Director of the Office of Maintenance whose decision is final. Beginning from the time the dispute is elevated to the Contract Administrator, the Department is allowed a total of ten (10) business days to resolve the dispute. If the ten (10) business days elapse before the dispute is resolved or if the dispute is resolved in favor of the Contractor, the disputed MRP characteristic will be changed to reflect the Contractor's evaluation for the disputed MRP sample point. After all disputes are resolved, the Department will recalculate official MRP scores accordingly.

HIGHWAY LIGHTING

HIGHWAY LIGHTING		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Unsatisfactory Department lighting outage survey	Per Procedures, Manuals, Codes, and Per Performance Lighting Specifications (Standard Maintenance Special Provisions)	\$5,000 per survey identifying excessive outage
b. Failure to make temporary safety repairs resulting from Incidents	Must secure public safety from hazards and establish proper MOT before leaving the site	\$1,000 per day per light pole
c. Failure to replace light poles damaged by Incidents	Per Performance Lighting Specifications (Standard Maintenance Special Provisions)	\$500 per day per light pole

PERMITS COORDINATION, PROCESSING, ADMINISTRATION, & INSPECTION

Perform all permitting activities within or associated with Department Right of Way. Meet all the requirements in *Florida Administrative Code (F.A.C.)*.

Coordinate, process, administer, and inspect all permits on the roadways, structures, and facilities covered by this contract. Enter all permit related data into the Department's permits tracking system. Collect all permit fees and turn them over to the Department's representative. The Department will retain all approvals and signatures as required by the *F.A.C.* Process all permits expeditiously as required by *Florida Statutes* and *F.A.C.* Process "General Use" permits in accordance with District requirements. Process all permits to completion, which is either approval or denial.

Inspect all construction activities resulting from approved permits. Ensure permittee adherence to approved permit requirements and Department regulations and standards.

Develop and maintain a Permit Processing and Inspection Plan which details the permitting process, adherence to permitting requirements, and processes to ensure customer satisfaction.

The scope of this contract does not include permitting of outdoor advertising billboards or permitting of overweight/overdimension vehicles.

Permits PERFORMANCE CRITERIA

PERMITS		
Deficiency Identification	Time Allowed/Criteria	Deduction
a) Failure to timely process permits via the Department's permit tracking system	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, etc.	\$500 per day per permit
b) Failure to ensure project is constructed as permitted	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, etc.	\$500 per day per permit

ROADWAY CHARACTERISTICS INVENTORY (RCI)

Update the Maintenance Roadway Characteristics Inventory (RCI) when changes occur to any roadway characteristic within the project limits. Verify and update each RCI characteristic periodically as directed by the Maintenance Roadway Characteristics Inventory Manual. Maintain updated coding sheets in Contractor files.

RCI Performance Criteria

ROADWAY CHARACTERISTICS INVENTORY		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to timely and accurately update RCI	Per RCI Manual, Procedures, etc.	\$100 per day per delinquent or incorrect RCI data entry

REST AREAS, WELCOME CENTERS, and WAYSIDE PARKS (NOT INCLUDED)

The scope of this contract does not include the management, operation, or maintenance of Rest Areas, Welcome Centers, and Wayside Parks.

REST AREA SECURITY (NOT INCLUDED)

The scope of this contract does not include providing any Security Guard Services at any Rest Area facilities.

ROAD RANGER SERVICE PATROL (NOT INCLUDED)

The scope of this contract does not include providing Road Rangers Service Patrols.

REST AREA UTILITY BILLS (Not Included)

The scope of this contract does not include payment of utility bills associated with each Rest Area.

PAYMENT OF WELCOME CENTER UTILITY BILLS (NOT INCLUDED)

The scope of this contract does not include payment of utility bills associated with each Welcome Center.

PAYMENT OF ROADWAY UTILITY BILLS (NOT INCLUDED)

Except for utility bill payments required in “Other Contractual Requirements” or other utility payment sections of this Scope of Services, the scope of this contract does not include the payment of any utility bills for the asset located within the limits of this contract.

WEIGH STATION and TRUCK COMFORT STATION MAINTENANCE (NOT INCLUDED)

The scope of this contract does not include Weigh Station and Truck Comfort Station maintenance.

PAYMENT OF WEIGH STATION UTILITY BILLS (NOT INCLUDED)

The scope of this contract does not include payment of utility bills associated with each Weight Station.

OVERLANE SIGN STRUCTURE INSPECTION AND MAINTENANCE

Perform overlane sign structure inspection and maintenance, including collision damage repair. Inspect overlane sign structures according to the Department’s Bridge and Other Structures Inspection Reporting Procedures Manual. Participate in Feasible Action Review Committee (FARC) meetings and complete Work Orders generated by the Department’s Bridge Work Order System within allowable timeframes.

Overlane Sign Structure PERFORMANCE CRITERIA

OVERLANE SIGN STRUCTURES		
Deficiency Identification	Deficiency Identification	Deficiency Identification
a. Failure to perform timely Inspections	a. Failure to perform timely Inspections	a. Failure to perform timely Inspections
b. Failure to timely submit Inspection Sheets/Reports	b. Failure to timely submit Inspection Sheets/Reports	b. Failure to timely submit Inspection Sheets/Reports
c. Failure to make repairs identified in Inspection Reports	c. Failure to make repairs identified in Inspection Reports	c. Failure to make repairs identified in Inspection Reports
d. Failure to make temporary safety repairs resulting from incidents	d. Failure to make temporary safety repairs resulting from incidents	d. Failure to make temporary safety repairs resulting from incidents
e. Failure to replace sign structures damaged by incidents	e. Failure to replace sign structures damaged by incidents	e. Failure to replace sign structures damaged by incidents

HIGH MAST LIGHT STRUCTURE INSPECTION AND MAINTENANCE

Perform all high mast light structure inspection and maintenance, including collision damage repair. Inspect high mast light structures according to the Department's Bridge and Other Structures Inspection Reporting Procedures Manual. Participate in Feasible Action Review Committee (FARC) meetings and complete Work Orders generated by the Department's Bridge Work Order System within allowable timeframes.

High Mast Light Structure Inspection and Maintenance PERFORMANCE CRITERIA

HIGH MAST LIGHT STRUCTURE INSPECTION AND MAINTENANCE		
Deficiency Identification	Time Allowed/Criteria	Deduction
a) Failure to perform timely Inspections	Per Procedures, Manuals, Codes, etc.	\$500 per day per delinquent inspection
b) Failure to timely submit Inspection Sheets/Reports	Within 60 days from inspection	\$100 per day per delinquent report
c) Failure to make repairs identified in Inspection Reports	Per Department Procedures, Manuals, Codes, etc.	\$1,000 per day per high mast light structure

d) Failure to make temporary safety repairs resulting from incidents	Must secure public safety from hazards and establish proper MOT before leaving	\$1,000 per day per location
e) Failure to replace high mast structures damaged by incidents	Permanent structures installed within 180 days	Permanent structures \$500 per day per location

MOVEABLE BRIDGE INSPECTION (NOT INCLUDED)

The scope of this contract does not include inspection of any movable bridges.

NON-MOVEABLE BRIDGE INSPECTION (Excluding Locals)

In accordance with the Florida Administrative Code (F.A.C.), request Department approval for all Bridge Inspection Team Leaders, Bridge Inspection Supervisors, and the approving Professional Engineer. Request for Department approval any changes in such personnel.

Inspect all publicly owned bridges, excluding off-system local bridges and other State Agency bridges, according to frequencies and criteria required by the Code of Federal Regulations, the F.A.C., the Department's Bridge and Other Structures Inspection Reporting Procedures Manual, the Department's Bridge Underwater Operations Manual, the Department's Bridge Operations and Maintenance Manual, and other applicable Contract Documents. Create inspection reports using the Department's Bridge Management System. Furnish the Department with original signed and sealed inspection reports within timeframes established in these same Contract Documents.

As a part of bridge inspection duties, determine if a review of the current load rating capacity is warranted for each inspection. If warranted, perform revised bridge load rating analyses.

Immediately notify the Department verbally if field observations reveal deficiencies sufficiently critical to warrant immediate and substantial traffic restriction or closing of the bridge. Confirm the verbal notification with a written notification within twenty-four (24) hours.

Maintain all bridge records in Contractor files at all times in preparation for audit reviews. Ensure bridge inspectors attend appropriate bridge inspection training as provided by the Department. The Department will provide District-specific Quality Control checklists/criteria to the Contractor. The Department (District) will perform quality assurance reviews using these checklists by inspecting bridges that have been previously inspected by the Contractor and by reviewing the inspection records for conformity with the Department's findings.

Non-Moveable Bridge Inspection PERFORMANCE CRITERIA

NON-MOVEABLE BRIDGE INSPECTION

Deficiency Identification	Time Allowed/Criteria	Deduction
a) Failure to perform timely Bridge Inspections	Per Procedures, Codes, Manuals, etc.	\$1,000 per day per delinquent inspection
b) Failure to timely submit Inspection Sheets/Reports	Within 60 days from inspection	\$500 per day per delinquent report
QUALITY CONTROL		
Deficiency Identification	Time Allowed/Criteria	Deduction
a) Bridge inspection District QAR score falls below minimum allowed	Per Procedures, Codes, Manuals, District-provided QAR checklist, etc.	Per District-provided QAR checklist and criteria

MOVEABLE BRIDGE TENDING & PREVENTATIVE MAINTENANCE (NOT INCLUDED)

The scope of this contract does not include movable bridge tending duties or bridge tender preventative maintenance.

NON-MOVEABLE BRIDGE MAINTENANCE

Maintenance Responsibility

Bridge tasks are divided into appropriate maintenance activities as described in the Departments *Maintenance Cost Handbook*. Participate in Feasible Action Review Committee (FARC) meetings and complete Work Orders generated by the Department's Bridge Work Order System within allowable timeframes. Perform Routine/Preventive Bridge Maintenance, Minor Repair, Periodic Maintenance and Major Repair, including collision damage repair, defined below. In order to minimize traffic impact, make every practical effort to quickly and efficiently complete maintenance and repairs that require closure of a lane.

Routine/Preventive Maintenance: The preservation and upkeep of a structure, including all its appurtenances, maintenance and servicing of mechanical, electrical and hydraulic systems, in its original condition (or as subsequently improved) insofar as practical. Preventive maintenance includes any activity intended to maintain an existing condition or to prevent deterioration. Examples include but are not limited to: cleaning, lubrication, spot painting, dirt and debris removal, and application of protective systems. Ideally, preventive maintenance is anticipated (i.e. planned) routine maintenance.

Minor Repair: The restoration of a structure, including all its appurtenances, to its original condition (or as subsequently improved) insofar as practical. Minor repairs include any activity intended to correct the effects of minor material deterioration by restoring the damaged member. Minor repairs are generally defined as repairs to bridge elements that are structurally sound (i.e., no loss of strength), but may have minor section loss, cracking, spalling, or scour. Minor repairs are un-anticipated routine maintenance, usually identified by bridge inspectors. Examples include but are not limited to repair and/or replacement of an in-kind deck joint and localized material restoration of: deck expansion joints and joints system, deck surfaces, sidewalks,

drainage systems, bridge railing systems, superstructure members and bearing devices, substructure members, waterway channels, approach slabs, anchorages, all fender system components, mechanical, electrical or hydraulic systems, replacement of individual parts of the mechanical, electrical or hydraulic systems and structural crack injection and matrix loss restoration. Should a joint or joint system be partially or completely damaged, then the entire bridge width of the joint and affected nosing portion of joint system shall be replaced.

Periodic Maintenance and Major Repair: The restoration of a structure, including all its appurtenances, to its original condition (or as subsequently improved) insofar as practical. Major repairs include any activity intended to correct deteriorated members. Conditions requiring major repairs include loss of section, deterioration, spalling, or scour that affect the strength of the member, replacement or upgrading of the mechanical, electrical or hydraulic systems. Engineering analysis is often performed to determine the extent of the lost strength. Examples include but are not limited to localized or full material restoration of: deck expansion joints and joint systems, deck surfaces, sidewalks, drainage systems, bridge railing systems, superstructure members and bearing devices, substructure members, waterway channels, approach slabs, anchorages, all fender system components, concrete restoration requiring reinforcement splicing, structural crack injection and matrix loss restoration, and metal fabrication to restore the integrity of or to replace structural elements.

The scope of this contract does not include performance of Bridge Rehabilitation defined as follows:

Rehabilitation: The improvement or betterment of a structure, including all its appurtenances, to a condition meeting or exceeding current design standards, insofar as practical. Examples of rehabilitation include: widening a bridge to meet lane/shoulder width requirements, replacement of substandard bridge rails, raising a bridge to meet clearance requirements, strengthening a bridge to increase load carrying capacity to accepted limits, and upgrading the operational equipment of a movable span.

Bridge Work Orders in First and Final Contract Years

In the first year of the contract, expect to take responsibility for all outstanding Priority I & Priority II Bridge Work Orders generated during the 15 day period before this contract's execution date. Also expect to take responsibility for all Priority III Bridge Work Orders generated during the six (6) month period before this contract's execution date. Complete these inherited Bridge Work Orders before their due dates.

During the final year of the contract, complete all Priority I & Priority II Bridge Work Orders generated prior to the final 15 days of the contract, and complete all Priority III Work Orders generated prior to the final six (6) months of the contract.

Bridge Maintenance Performance Criteria

The Department will periodically perform quality assurance reviews by inspecting bridge repairs and maintenance activities recently completed by the Contractor. In this Performance Criteria chart, one "location" is defined as a collection of all areas on a bridge needing or receiving attention due to a common reason.

Non-Moveable Bridge Maintenance PERFORMANCE CRITERIA

BRIDGE MAINTENANCE		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to timely complete repairs identified in Bridge Work Orders	Per Procedures, Manuals, Codes, etc.	\$1,000 per day per delinquent Work Order
b. Failure to make temporary safety repairs resulting from Incidents	Must secure public safety from hazards and establish proper MOT before leaving the site	\$1,000 per day per location (clock starts at the moment contractor leaves the location without proper MOT).
c. Failure to replace or repair damaged bridge railing	Secure the site within 24 hrs of notification or discovery.	\$2000 per day per location.
	Complete permanent repairs within 15 days.	\$1000 per day per location.
d. Failure to timely complete urgent or emergency repairs identified outside of the Bridge Work Order system	Complete permanent repairs within 30 days of notification or discovery.	\$2,000 per day per location.
NAVIGATION LIGHTING (INCLUDES UNDERDECK AND AERIAL)		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to temporarily repair outage following notification or discovery	Install temporary lights within 2 hours of notification or discovery.	\$100 per hour per non-functioning light.
b. Failure to permanently repair outage following notification or discovery	Install permanent lights within 24 hours of notification or discovery.	\$500 per hour per non-functioning light.
QUALITY CONTROL		
Deficiency Identification	Time Allowed/Criteria	Deduction
a. Failure to complete bridge repairs with proper quality as identified through District or Central Office QAR	Per Procedures, Manuals, Codes, Design Standards, etc.	\$500 per day per location until deficient repair is corrected (clock starts from date of completed repair, not date of QAR).

MOVEABLE BRIDGE TENDING & PREVENTATIVE MAINTENANCE (NOT INCLUDED)

The scope of this contract does not include movable bridge tending duties or bridge tender preventative maintenance.

PAYMENT OF MOVEABLE BRIDGE UTILITY BILLS (NOT INCLUDED)

The scope of this contract does not include payment of utility bills associated with each movable bridge.

TRAFFIC SIGNAL MAINTENANCE (NOT INCLUDED)

The scope of this contract does not include traffic signal maintenance.

TRAFFIC OPERATIONS WORK ORDERS

Perform all Traffic Operations Work Orders as directed by the Department. These may include any system modifications, deletions, or additions related to but not limited to signing, pavement marking and safety related features. This related work will not exceed \$25,000.00 cumulatively during any single contract year based upon the Department's unit prices. Costs must be based on established FDOT state contract prices.

Traffic Operations Work Orders PERFORMANCE CRITERIA

TRAFFIC OPERATIONS WORK ORDERS		
Deficiency Identification	Time Allowed/Criteria	Deduction
a) Traffic Operations Work Order not completed within allowed timeframe	Work must be completed within timeframe established in Work Order	\$100 per day late per Work Order
b) Traffic Operations Work Order not completed correctly or according to requirements	Work must be completed according to requirements established in the Work Order, procedures, specifications, and other Contract Documents	Re-perform the work until correct plus any deductions due to exceeding allowed timeframe

DEPARTMENT OF CORRECTIONS INMATE LABOR (NOT INCLUDED)

The scope of this contract does not include utilization of Florida Department of Corrections (FDC) inmate labor crews.

INTELLIGENT TRANSPORTATION SYSTEMS (NOT INCLUDED)

The scope of this contract does not include any ITS components.

ATTACHMENTS

Attachments I thru III are incorporated into this contract.

NON-STANDARD PAYMENT SCHEDULE

Refer to Section 4, "Other Contractual Requirements" of this Scope of Services for the unique Payment Schedule for this contract.

4. OTHER CONTRACTUAL REQUIREMENTS

ADDED MRP CRITERIA

The following MRP characteristics feature enhanced performance criteria and associated deductions for failure to perform. These non-refundable deductions are in addition to any retainage/deductions required per the MRP performance measures chart in Section 3 of this Scope:

Roadside Mowing:

Maintain an individual characteristic rating of 90 or better as evaluated by the scheduled MRP cycles for Roadside Mowing. If the Contractor fails to achieve the required MRP score of 90 for any MRP cycle, the Department will deduct from the Contractor's monthly payment one quarter of a percent (.25%) of the Contractor's next monthly payment for each point below 90 on the characteristic rating.

Slope Mowing:

Maintain an individual characteristic rating of 90 or better as evaluated by the scheduled MRP cycles for Slope Mowing. If the Contractor fails to achieve the required MRP score of 90 for any cycle, the Department will deduct from the Contractor's monthly payment one quarter of a percent (.25%) of the Contractor's next monthly payment for each point below 90 on the characteristic rating.

ENHANCED MOWING RANDOM INSPECTIONS

Performance Criteria and Deduction are in addition to those related to MRP criteria. For the following performance criteria, at any time, the Department reserves the right to ensure performance criteria are being met. The Department may perform repeat evaluations of same deficiency as often as each day.

Deficiency Identification	Time Allowed /Criteria	Deduction
At any time, mowing height within the fence limits of a pond exceeds 24 inches.	Upon identification.	\$500 per occurrence.

At any time roadside mowing height exceeds 6 inches above the MRP criteria for Rural Limited Access, Urban Limited Access and Rural Arterial or 3 inches above the MRP criteria for Urban Arterial. Slope exceeds 24" in height. Edging encroaching curb or sidewalk exceeding 6".	Upon identification.	\$100 per centerline mile.
At any time, diseased or dead vegetation is found within landscaped areas.	Upon identification unless the contractor can demonstrate why replacement of dead vegetation should be postponed.	\$500 per landscaped location.
At any time, a dead or leaning tree is discovered.	Upon identification. Correction shall occur within 24 hours, unless the contractor can demonstrate why removal should not be proposed. The Department may, at the Engineers discretion, agree to postpone removal if any temporary specific hardship is identified.	\$1000 per occurrence.

STORMWATER AND MITIGATION MAINTENANCE

Perform inspections at frequencies identified in the permit and permit compliance plan. Submit an accurate inspection report to the Department identifying all permit deficiencies and suggested corresponding corrective actions. Perform all necessary maintenance activities for all stormwater and mitigation facilities so that the facilities function properly as designed and are in compliance with all federal, state, and local permit criteria. Permitting Agencies will conduct periodic permit compliance inspections to ensure facilities are being properly maintained. Some inspections will be scheduled, while some will be random.

Stormwater and Mitigation Maintenance Performance Criteria

Deficiency Identification	Time Allowed/Criteria	Deduction
Five or more deficiencies are identified on Contractor's inspection report	Immediately upon receipt of permit inspection report	\$1000 per facility containing 5 or more deficiencies.
One or more deficiencies are found through permit inspection performed by Permitting Agency	Immediately upon failure to complete required corrective action within required timeframes.	\$5000 per deficiency if required corrective action is not taken within required timeframes.

Failure to perform inspections and provide accurate inspection reports to the Department	As required by permit or permit compliance plan	\$200 per occurrence
--	---	----------------------

INLETS, MANHOLES, AND JUNCTION BOXES:

The Department will evaluate the following Performance Criteria using the same methodology as the Asset Maintenance Contractor Performance Evaluation Report (AMPER) "Review Type 3".

Inlets, Manholes, Pipes and Junction boxes Performance Criteria

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to clean manholes, inlets and pipes	Immediately upon discovery of a sump more than 50% full of debris, or that the cross sectional area at any point of a pipe is more than 25% restricted by debris	\$1000 per occurrence or violation
Failure to replace frames and grates that are missing or badly damaged (more than 25% non-functional)	Immediately upon discovery of a missing or damaged grate	\$500 per occurrence or violation
Flooding determined to be due to blockage or damaged pipe	Immediately upon flooding, in addition to any other applicable performance deductions	\$5,000 per occurrence

NON-PERMITTED SIGNS

To ensure the safety of the traveling motorist, remove all non-permitted signs located within the Department's right of way, including signs posted on the Department's fencing. The Department will evaluate this performance standard at any time. If the Department identifies a non-permitted sign, the Contractor will be notified and be assessed an invoice deduction.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to remove non-permitted signs	Immediately upon discovery.	\$100 per occurrence per sign

OPAQUE VISUAL BARRIER:

The Department will evaluate the following Performance Criteria for opaque visual barriers, glare paddles, or any other device serving the same purpose. The same methodology as the AMPER "Review Type 3" will be utilized.

Deficiency Identification	Time Allowed/Criteria	Deduction
Two or more consecutive paddles are missing	Immediately	\$100 per occurrence per paddle

The performance measure for Barrier Walls under Section 3 of the Scope will be applied to concrete Opaque Visual Barriers above concrete walls.

ILLEGAL HABITATION OF THE DEPARTMENT'S RIGHT-OF-WAY

Upon becoming aware of individuals who appear to be utilizing any portion of the Department's right-of-way for habitation purposes, it will be necessary to have such individuals relocated. Contact the District Roadway/Roadside Administrator to coordinate relocation activities. Once an individual is relocated, dispose of all debris, in accordance with all Local, State and Federal laws. Furnish and install "NO TRESPASSING" signs at locations where it appears that people are utilizing the area for habitation purposes.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to dispose of all debris associated with the illegal habitation	Immediately upon completion of Relocation	\$500 per day per location

MRP POINTS

In addition to mainline roadways, the MRP points can also fall on bridges, on/off ramps, interchanges, perimeter roads, service roads, and any other roadway section within the maintenance boundaries shown in Attachment III.

OTHER EMERGENCIES

An "Other Emergency" is further defined to also include any situation that causes, or has the ability to create, an unsafe or hazardous condition to the traveling public or presents the possibility to cause damage to public and/or private property.

ENHANCED HIGHWAY LIGHTING

Maintain the highway lighting system on the corridors shown in Attachment III. Include lights that are located on local roads, on and off ramps, service roads, frontage roads associated with the highway system.

Each Compliance Indicator below shall be evaluated using the same methodology as the AMPER "Review Type 3".

HIGHWAY LIGHTING		
Deficiency Identification	Time Allowed/Criteria	Deduction
If more than 10 consecutive street lights are out not attributed to lightening strikes or theft	Upon identification	\$2,000 per occurrence
If more than 5 consecutive street lights are out attributed to lightening strikes or theft	After 48 hours of incident	\$2,000 per occurrence

Lights are discovered to be on anytime between dawn & dusk, without a valid reason.	Upon Identification	\$500 per occurrence per load center
---	---------------------	--------------------------------------

Once per year, the Department will require that the Contractor lowers and raises one hand-picked Department-selected highmast light. In addition, based on the terms of this contract, the Contractor may be required to lower/raise the highmast lights, such as pre-hurricane preparation. In the event the lowering/raising mechanism does not fully lower or raise the lights, the deduction below will be assessed.

HIGHMAST LIGHTING		
Deficiency Identification	Time Allowed/Criteria	Deduction
Lowering mechanism fails to fully lower or fully raise the lights	Based on demonstration described above or based on scope, procedure, standards, etc	\$200,000 per occurrence per High Mast Light Pole
If all luminaires are out on two (2) or more adjacent highmast poles not attributed to lightning strikes or theft	Upon identification	\$4,000 per occurrence
If all luminaires are out on two (2) or more adjacent highmast poles attributed to lightning strikes or theft	After 48 hours of incident	\$4,000 per occurrence
Lights are discovered to be on anytime between dawn & dusk, without a valid reason.	Upon Identification	\$500 per occurrence per load center.

EXPRESS LANES EXCLUSIVITY:

Maintain a safe system that separates the Express Lanes from the General Purpose lanes. This system shall prevent all vehicles from traveling from the Express Lanes to the General Purpose lanes, and vice versa. Accomplished this by satisfying one of the two methods described below.

Since the Express Lanes alleviate congestion and increase travel times by allowing users to pay a fee to use the Express Lanes, lanes closures are only permitted on certain nights. The contractor can perform one (1) lane closure northbound and one (1) lane closure southbound of the Express Lanes per week. The Department will provide the Contractor the current MOT plans, if available. The Contractor shall review, improve, and assume all responsibility for the MOT plans at the beginning of the contract.

(Method 1) Replace damaged or missing high performing delineators on all Express Lanes.
Performance Criteria associated with this Method include:

Deficiency Identification	Time Allowed/Criteria	Deduction
----------------------------------	------------------------------	------------------

Delineator not orange in color (matching existing)	Immediately upon identification	\$500 per delineator
Delineator less than 42 inches-in height (from pavement surface to top of delineator)	Immediately upon identification	\$500 per delineator
Delineators not meeting vertical tolerances	Immediately upon identification	\$500 per delineator
Reflective sheeting less than 30 square inches or more than 40 square inches	Immediately upon identification	\$1,000 per delineator
More than three consecutive delineators missing	Immediately upon identification	\$10,000 per location
More than 100 delineators missing in either the southbound or northbound direction	Immediately upon identification	\$10,000 per side of road
Failure to provide access to the Department and its representatives to the areas closed off to traffic	Immediately upon identification	\$1,000 per Incident

(Method 2) Design, develop, install and maintain a safe and effective system that prevents vehicles from traveling from the Express Lanes to the General Purpose lanes, and vice versa. Repair the system along all Express Lanes. Follow Section 1.7 - Contractor Responsibilities, when submitting to the Department new and innovative products. Performance Criteria associated with this Method include:

Deficiency Identification	Time Allowed/Criteria	Deduction
System is not maintained to preserve the product characteristics submitted to the Department	Immediately upon identification	\$500 per Location
Vehicles cross from the Express Lanes into the General Purpose Lanes, or vice versa	Immediately upon identification	\$10,000 per Incident
Failure to provide access to the Department and its representatives to the areas closed off to traffic	Immediately upon identification	\$1,000 per Incident

MAINTENANCE MAPS UPDATES

Complete and update the Maintenance Maps throughout the life of this contract. A progress-set submittal is due eight (8) months after beginning contract which will demonstrate to the Department the manner and progress of this task. Updating the maintenance maps shall be complete one (1) year after beginning contract. Updated sets showing all updates to each of the corridors under this contract are due to the Department every six (6) months beginning one (1) year after beginning contract. Each submittal will require four hard copies and two DVDs. The Department will provide the Contractor a DVD with all existing Maintenance Maps. These maps were created using Microstation. All plan features stated below are required in the maps. Submit maps as described below.

~ Roadway Lighting:

All roadway lighting including poles, high-masts, sign structures, under-deck lighting, navigational lights, key pull boxes, load centers, and circuit numbers. Each pole shall be numbered within each circuit sequentially starting closest to the source of power.

Be responsible for furnishing and installing the pole structure tags system-wide and proposed to the Department prior to incorporation. Also include in the maps the following:

- Voltage and wattage of each fixture per pole or structure
- Location of each secondary load center
- Local power provider service points
- Voltage in and voltage out configuration of each secondary load center
- Ownership of photocell
- Contactor at each load center (FDOT, the local power provider, etc.)
- Local power provider transformer number for each service point

Also required in these maps are the structure number of each sign structure and high-mast. The Department will provide the Contractor with all the as-built drawings available. A hardcopy is available upon Contractor's request. When available, the Department will provide DGN files of all existing lighting systems.

Furnish and install permanent tags to each pole and load center. Unless otherwise approved by the engineer, tags shall be 1" black on yellow aluminum letters/numerals in aluminum sleeves/holders mounted vertically. Each holder shall be capable of displaying 11 characters minimum. Tags shall be affixed to single arm poles with aluminum rivets and to steel structures with silicone/adhesive approved by the engineer. Newly constructed or re-worked systems or load center shall be updated utilizing all of the above criteria.

~ Landscape:

Delineate all landscaped areas and include text showing their corresponding areas in square yards. Landscape areas include all living natural plants except for the lawn/sod. If invasive species are found during each of the field reviews, these areas should also be included in the map updates. At each submittal to the Department, the Contractor shall submit a report signed and sealed by a Landscape Architect registered in the State of Florida certifying that the information contained in the maintenance maps is accurate based on his/her field reviews.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to timely submit Completed / updated Maintenance Maps	Per Maintenance Maps Updates Section	\$500 per day

BEGIN OF CONTRACT TRANSITION

Prior to start of contract, the Department may request representative(s) of the Contractor up to twenty (20) days to help with the transition of the current contract to the new contract. Roles to be performed by this person will include reviewing contractual documents, field reviews, review and become familiar with all active permits, review and become familiar with all active

correspondence, and any other task as directed by the Department required to properly and efficiently transition from the current contractor to the new contractor. The cost of this task shall be included in the unit bid price.

ENHANCED CRITERIA FOR GRAFFITI REMOVAL:

Our Limited Access corridors are bound by features that attract graffiti. These same corridors are also traveled every day by tens of thousands of motorists, tourists, the media and elected officials. It is extremely important to develop and implement a graffiti removal and prevention plan to minimize the exposure of graffiti to those traveling these corridors. Each Compliance Indicator below shall be evaluated using the same methodology as the AMPER “Review Type 3”.

The performance measure for Graffiti under Section 3 of the Scope is further enhanced as follows.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to remove graffiti considered explicit, offensive, vulgar, political, or sexual in nature.	Successfully remove graffiti within four (4) hours of identification	\$5,000 per occurrence
Failure to remove graffiti on multi-post or overhead sign panels	Successfully remove graffiti within twelve (12) hours of identification	\$5,000 per occurrence

ENHANCED PERMITS COORDINATION, PROCESSING, ADMINISTRATION, & INSPECTION

Submit complete and accurate permit packages to the District Permit Office for approval. The scope of this contract does not include permitting of outdoor advertising billboards or permitting of overweight/over-dimension vehicles. The deductions below are in addition to the deductions specified in Section 3 of the Scope.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to log in permit applications in the Department’s permit tracking system	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, District Requirements (within 3 days from receipt), etc.	\$500 per day per permit
Failure to timely process and submit permit package to District Permit Office	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, District Requirements (within 25 days from receipt), etc.	\$1,000 per day per permit
Failure to ensure projects are constructed as permitted	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, etc.	\$1,000 per occurrence
Failure to close out permits in the Department’s permit tracking system	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, District Requirements (within 14 days from final completion), etc.	\$1,000 per day per permit
Failure to submit accurate and complete Final permit package to District Office	Per <i>Florida Statutes, F.A.C.</i> , procedures, permit requirements, District Requirements (within 21 days from final completion), etc.	\$1,000 per day per permit

MSE WALLS AND SOUND-WALLS:

The following performance criteria applies to MSE walls and Sound-walls

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to replace or repair damaged walls	Upon identification and/or notification, secure with proper MOT before leaving the site	\$1,000 per day per location
	Permanent Repairs within 14 days of identification	\$1,000 per day per location

PROJECT DESIGN DOCUMENTS REVIEWS

Participate in all phase reviews of all design documents (plans, reports, studies, etc.) that impact the corridors under this contract.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to participate in any design phase review	Per Procedures, Manuals, District Requirements, etc	\$500 per occurrence

CONSTRUCTION PROJECT RESPONSIBILITIES AND INSPECTIONS:

Within construction project limits, continue to remain responsible for all roadway characteristics that are not part of the construction work activities throughout the duration of all active construction projects, per Procedure. Deductions mentioned throughout this Scope will be applied to all areas not properly maintained.

Participate in final walk-throughs for construction projects within the limits of this contract and identify any deficient items. Waiver of retainage and/or deductions due to failing characteristics in the MRP reviews will not be considered unless they have been identified prior to final acceptance. Participate in all warranty field reviews for any component deemed necessary by the Department.

SOUND-BARRIER WALLS MAINTENANCE:

Clean and paint approximately 20% of the sound-barrier walls within the maintenance limits within any contractual year. 100% of the total walls must be cleaned/restored/repainted by the end of five years from start of contract. Submit to the Department within 90 days of NTP a schedule that clearly quantifies and defines which walls will be painted throughout the contract beginning with the walls requiring the most attention. Also keep the walls properly maintained (clean/paint) at all times.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to submit schedule with plan to prioritize, clean and paint all sound barrier walls	Within 90 days after issuing NTP	\$100 per day until submitted
Improper techniques per the manufacturer's recommendations for cleaning and painting all the sound barrier walls	Per FDOT Specifications, Design Standards and Manufactures Requirements	\$500 per day from day of discovery until satisfactorily corrected
Failure to meet the schedule approved by the Department	Schedule reviewed every 12 months	\$200 per day until schedule is met

FENCES

Complete all permanent fence repairs and installations within 5 days of identifying a damaged fence, missing fence, or any other fence deficiency. A deficiency is defined as a condition not meeting the intent and location of the original design and installation. Perform temporary repairs immediately upon discovery of an area needing repair as described above.

Maintain a 5-foot wide mowed area in front of the Limited Access (LA) fence to provide a clear path for inspection and maintenance of the fence. The Contractor shall keep the fence properly maintained and free from growth including, but not limited to vines, weeds, and tree limbs. Fence must be kept intact and upright at all times. When mowing the fence line, do not mow jurisdictional wetland areas.

Each Compliance Indicator below shall be evaluated using the same methodology as the AMPER "Review Type 3".

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure to make temporary repairs	Immediately upon discovery	\$500 per occurrence
Failure to make permanent repairs	Within five days after discovery	\$1000 per occurrence
Failure to mow & maintain a 5-foot wide area in front of the LA fence	Immediately upon discovery	\$500 per occurrence

DYNAMIC VARIABLE MESSAGE SIGNS

"Overlane Sign Structures" also include all structures used for dynamic/variable message signs. A contract currently exists with another Contractor to maintain the conduits, fiber, and other specialized ITS equipment mounted to the sign structures, and is therefore not included in the scope of this contract.

UTILITY BILLS AND INVOICE PAYMENTS FINANCIAL INCENTIVE:

Study the current FPL accounts and reorganize all of the invoices/accounts in a manner that makes sense relating to circuits, pole locations, sequence of lighting systems, corridors, and service points. This reorganization of invoices/accounts shall be compatible with and included in the Maintenance Maps (Attachment III).

Successful reorganization offers an opportunity for a financial incentive. The Department will share with the Contractor a portion of the savings realized by the work required under this section. Fifty percent (50%) of the utility payment savings realized within the first year will be shared with the Contractor. Twenty-five percent (25%) of the savings realized within the second year will be shared with the Contractor. No further savings will be shared after the end of the second year. Savings will be based on the average of last two years of utility payments.

The work completed under this section has to be fully accepted by the local power company and incorporated in the latest invoice in order for it to be considered worthy of sharing the savings with the Contractor. Submit to the Department within the first year of this contract all completed work required per this section.

MULTI-POST AND OVERHEAD SIGN PANEL REPLACEMENT:

Coordinate with the Department when updating the message or replacing the panels on all multi-posts and overhead signs. Failure to coordinate with the Department may result in replacing the sign panel at the Contractor's cost.

Deficiency Identification	Time Allowed/Criteria	Deduction
Replace multi-post or overhead sign panels without coordinating with the Department	Immediately upon discovery	\$500 per incident

SEAWALLS (PROCEDURE ENHANCEMENT):

The latest inspection procedure for seawalls only requires the inspection of 30 feet of seawalls beyond the footprints of a bridge. This enhanced requirement will require the Contractor to inspect all of the seawalls within our Maintenance Boundaries.

When a seawall is beneath and/or adjacent to a bridge, inspect the entire seawall directly beneath the bridge, plus a distance of 50 feet (measured from the deck coping in both directions perpendicular to the bridge) or up to the RW, whichever is longer. The Pontis Bridge Management System shall be updated to reflect the additional seawall inspections.

Inspect all other seawalls within our RW. Develop a software/program similar to the Pontis Bridge Management System within the first 60 days of the contract. This software/program will be utilized to inspect, document and repair all seawalls currently not in the Pontis Bridge Management System. Inspections of these seawalls will be done every five years or after a hurricane making contact with Miami-Dade County. Follow the latest bridge inspection procedures for all seawall documentation and condition state descriptions, exception where enhanced by this section.

Deficiency Identification	Time Allowed/Criteria	Deduction
Failure develop a program/software to inspect, document and repair seawalls	Within 60 days of contract start	\$5000 per incident
Failure to meet the inspection, documentation and reparation of seawalls	Immediately	\$5000 per incident

PAYMENT SCHEDULE

The Contractor shall be paid in equal monthly amounts per Financial Project Number (Project Description) by dividing the bid amount by the total number of months specified below under the “Total Months” column.

If renewal is allowed, the equal monthly amounts per Financial Project Number will be recomputed by dividing the bid amount for each Financial Project Number (Project Description) by the 84 months.

Financial Project Number	Total Months
430081-1-72-01 (I-95, I-195, I- 395 & I-75)	84
430080-1-72-02 (SR-826, SR-970, SR-913 & A-1-A)	84
430081-3-72-01 (I-95 Express Lanes)	84
435598-1-72-01 (I-75 Express Lanes)	50
435599-1-72-01 (SR-826 Express Lanes)	50

ATTACHMENT I

DEPARTMENT CONTRACTS THAT WILL CONTINUE INTO THE ASSET MAINTENANCE CONTRACT

[illegible]

ATTACHMENT II
(Revised November 2013)

STANDARD ASSET MAINTENANCE SPECIFICATIONS
GENERAL REQUIREMENTS AND COVENANTS

SECTION	TITLE	PAGE NUMBER (s)
1	Definitions and Terms	2
2	Proposal Requirements and Conditions	9
3	Award and Execution of Contract	11
4	Scope of the Work	14
5	Control of the Work	16
7	Legal Requirements and Responsibility to the Public	22
8	Prosecution and Progress	40
9	Measurement and Payment	50

SECTION 1

DEFINITIONS AND TERMS

1-1 General.

These Specifications are written to the bidder, prior to award of the Contract, and to the Contractor. Within these specifications, sentences that direct the Contractor to perform work are written in the active voice-imperative mood. These directions to the Contractor are written as commands. In the imperative mood, the subject “the bidder” or “the Contractor” is understood.

All other requirements to be performed by others, with the exception of the Method of Measurement and the Basis of Payment Articles, have been written in the active voice, but not in the imperative mood. Sentences written in the active voice identify the party responsible for performing the action. For example, “The Engineer will determine the density of the compacted material.” Certain requirements of the Contractor may also be written in the active voice, rather than active voice-imperative mood.

1-2 Abbreviations.

The following abbreviations, when used in the Contract Documents, represent the full text shown.

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
ISO	International Organization for Standards
MSTCSD	Minimum Specifications for Traffic Control Signals and Devices
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code

NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
SI	International System of Units
SSPC	Society of Protective Coatings
UL	Underwriters' Laboratories

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown.

1-3 Definitions.

The following terms, when used in the Contract Documents, have the meaning described.

Advertisement.

The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished, usually issued as “Notice to Contractors,” or “Notice to Bidders.”

Article.

The numbered prime subdivision of a Section of these Specifications.

Bidder.

An individual, firm, or corporation submitting a proposal for the proposed work.

Bid Proposal.

A technical proposal and a sealed price proposal submitted by each Asset Maintenance Contract Bidder.

Bridge.

A structure, including supports, erected over a depression or over an obstruction such as water, highway or railway, or for elevated roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the roadway, of more than 20 feet between the inside faces of end supports. A multiple-span box culvert is considered a bridge, where the length between the extreme ends of the openings exceeds 20 feet.

Calendar day.

Every day shown on the calendar, ending and beginning at midnight.

Contract.

The term “Contract” means the entire and integrated agreement between the parties thereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

Contract Claim (Claim).

A written demand submitted to the Department by the Contractor in compliance with 5-12.3 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.

Contract Documents.

The term “Contract Documents” includes: Advertisement, Request for Proposal (RFP), Scope of Services, Technical Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Addenda, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, work orders and supplemental agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of contract. “Contract Documents” are further defined in the Asset Maintenance Scope of Services.

Contract Bond.

The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pays all legal debts pertaining to the maintenance of the project.

Contract Letting.

The date that the Department opened the bid proposals.

Contract Time.

The number of calendar days allowed for completion of the Contract work, including authorized time extensions.

Contractor.

The individual, firm, joint venture, or company contracting with the Department to perform the work.

Contractor’s Engineer of Record.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor’s Engineer of Record may also serve as the Specialty Engineer.

Controlling Work Items.

The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.

Culverts.

Any structure not classified as a bridge that provides an opening under the roadway.

Delay.

Any unanticipated event, action, force or factor which extends the Contractor’s time of performance of any controlling work item under the Contract. The term “delay” is intended to cover all such events, actions, forces or factors, whether styled “delay”, “disruption”, “interference”, “impedance”, “hindrance”, or otherwise, which are beyond the control of and not

caused by the Contractor, or the Contractor's subcontractors, materialmen, suppliers or other agents. This term does not include "extra work".

Department.

State of Florida Department of Transportation.

Engineer.

The Director, Office of Maintenance, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

Note: In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where "acceptable, accepted, approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory," it shall be understood as if the expression were followed by the words "by the Engineer," "to the Engineer," or "of the Engineer."

Engineer of Record.

The Professional Engineer or Engineering Firm registered in the State of Florida that develops the criteria and concept for the project, performs the analysis, and is responsible for the preparation of the Plans and Specifications. The Engineer of Record may be Departmental in-house staff or a consultant retained by the Department.

The Contractor shall not employ the Engineer of Record as the Contractor's Engineer of Record or as a Specialty Engineer.

Equipment.

The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the acceptable completion of the work.

Extra Work.

Any "work" which is required by the Engineer to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a "delay".

Highway, Street, or Road.

A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

Holidays.

Days designated by the State Legislature or Cabinet as holidays, which include, but are not limited to, New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the following Friday, and Christmas Day.

Inspector.

An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor.

Laboratory.

The official testing laboratory used by the Department.

Major Item of Work.

Any item of work having an original Contract value in excess of 5% of the original Contract amount.

Materials.

Any substances to be incorporated in the work under the Contract.

Median.

The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.

Plans.

The approved plans, including reproductions thereof, showing the location, character, dimensions, and details of the work.

Proposal (Bid, Bid Proposal).

The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

Technical Proposal.

The bidder's submittal in response to the technical requirements set forth in the Department's Request for Proposal.

Price Proposal.

The bidder's submittal, on the prescribed form, in response to the price requirements set forth in the Department's Request for Proposal.

Proposal Form.

The official form or the expedite program generated bid item sheets on which the Department requires formal bids to be prepared and submitted for the work.

Proposal Guaranty

The security furnished by the bidder as guaranty that the bidder will enter into the Contract for the work if the Department accepts the proposal.

Request for Proposal (RFP).

Package to be provided to Asset Maintenance Contract Bidders defining requirements of the contract and the functions and responsibilities of the Contractor and Department. The Criteria for Scope of Work and Service, and all other documents attached thereto together set forth the criteria for work to be provided to complete this Contract.

Right-of-Way.

The land that the Department has title to, or right of use, for the road and its structures and appurtenances, and for material pits furnished by the Department.

Roadbed.

The portion of the roadway occupied by the subgrade and shoulders.

Roadway.

The portion of a highway within the limits of maintenance.

Secretary.

Secretary of Transportation, State of Florida Department of Transportation, acting directly or through an assistant or other representative authorized by him; the chief officer of the Department of Transportation.

Section.

A numbered prime division of these Specifications.

Special Event.

Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, or similar activity designated in the Contract Documents.

Specialty Engineer.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the project work or for special items of the permanent works not fully detailed in the plans and required to be furnished by the Contractor such as but not limited to pot bearing designs, nonstandard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may also provide designs and details for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”. The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant.

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if he has the following qualifications:

- (1) Registration as a Professional Engineer in the State of Florida.
- (2) The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

Specifications.

The directions, provisions, and requirements contained herein, together with all stipulations contained in the Contract Documents, setting out or relating to the method and manner of performing the work, or to the quantities and qualities of materials and labor to be furnished under the Contract.

State.

State of Florida.

Subarticle.

A headed and numbered subdivision of an Article of a Section of these Specifications.

Subgrade.

The portion of the roadbed immediately below the base course or pavement, including below the curb and gutter, valley gutter, shoulder and driveway pavement. The subgrade limits ordinarily include those portions of the roadbed shown in the plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the plans, the subgrade section extends to a depth of 12 inches below the bottom of the base or pavement and outward to 6 inches beyond the base, pavement, or curb and gutter.

Substructure.

All of that part of a bridge structure below the bridge seats, including the parapets, backwalls, and wingwalls of abutments.

Superintendent.

The Contractor's authorized representative in responsible charge of the work.

Superstructure.

The entire bridge structure above the substructure, including anchorage and anchor bolts, but excluding the parapets, backwalls, and wingwalls of abutments.

Supplemental Agreement.

A written agreement between the Contractor and the Department, and signed by the surety, modifying the Contract within the limitations set forth in these Specifications.

Surety.

The corporate body that is bound by the Contract Bond with and for the Contractor and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.

Traveled Way.

The portion of the roadway providing for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Unilateral Payment.

A payment of money made to the Contractor by the Department pursuant to Section 337.11(12), Florida Statutes (2009), for sums the Department determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against the Department for payment of any additional sums the Contractor claims are due for the work.

Work.

All labor, materials and incidentals required to execute and complete the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.

Work Order.

When pertaining to a Structure or Bridge, Work Order is a written task identified by a structure inspector and determined by the Feasible Action Review Committee as necessary to be done to a structure. The task will be recorded in the Department's bridge inventory system and completed by a specified deadline.

When pertaining to Traffic Operations, a Work Order is a written task assigned to the contractor that has described under the Scope Subsection "TRAFFIC OPERATIONS WORK ORDERS".

Working Day.

Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.

SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS

2-2 Proposals.

2-2.1 Obtaining Proposals: Obtain a proposal under the conditions stipulated in the Advertisement. The proposal identifies the location and description of the work to be performed; the items of work to be performed (if applicable); the Contract Time; the amount of proposal guaranty; and the date, time, and place of the opening of proposals.

The Plans, Specifications and other documents designated in the proposal are part of the proposal, whether attached or not.

2-2.2 Department Modifications to Contract Documents: Modifications to any Contract Documents will be posted on the Department's website at the following URL address: <http://www.dot.state.fl.us/cc-admin/addend.htm>.

The bidder shall take responsibility for checking and downloading the revised data from the Department's website upon notification from the Department. The bidder must provide an e-mail address to the Department for receipt of addenda notification. Contractors must follow the amendment access instructions provided on the website. If the Department's website cannot be accessed, contact the Department's Contracts Administration Office Web Coordinator at (850) 414-4000.

2-3 Interpretation of Estimated Quantities.

The bidder is responsible for the determination of the quantities for those items constructed or maintained.

The Department does not assume any responsibility for any incidental information in bid documents that may be construed as a quantity of work and/or materials.

2-4 Examination of Plans, Specifications, Special Provisions and Site of Work.

Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents. Direct all questions to the Department by posting them to the Department's website at the following URL address: <https://www3.dot.state.fl.us/BidQuestionsAndAnswers/Proposal.aspx/SearchProposal>. Questions posted to this site before 5:00 P.M. (EST) on the seventh calendar day prior to the (Technical Proposal/Bid) opening, or tenth calendar day prior to the December (Technical Proposal/Bid) opening, will be responded to by the Department. For questions posted after these times, an answer cannot be assured. For all questions posted before the deadline, the Department will provide and post responses at the same website before 8:00 A.M. (EST) on the second calendar day prior to bid opening. Take responsibility to review and be familiar with all questions and responses posted to this website and to make any necessary adjustments in the proposal accordingly. When, in the sole judgment of the Department, responses to questions require plans

revisions, specifications revisions and/or addenda, the Contracts Office will issue them as necessary.

The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Article.

2-6 Rejection of Irregular Proposals.

A proposal is irregular and the Department may reject it if it shows omissions, alterations of form, additions not specified or required, conditional or unauthorized alternate bids, or irregularities of any kind; or if the unit prices are obviously unbalanced, or if the cost is in excess of or below the reasonable cost analysis values.

2-7 Guaranty to Accompany Proposals.

The Department will not consider any proposal unless it is accompanied by a proposal guaranty of the character and amount indicated in the Advertisement, and unless it is made payable to the Florida Department of Transportation. Submit proposals with the understanding that the successful bidder shall furnish a Contract Bond pursuant to the requirements of 3-5.

2-9 Withdrawal or Revision of Proposals.

2-9.1 Internet Bid Submittals: A bidder may withdraw a proposal any time prior to the bid submittal deadline specified in the Advertisement. The resubmission of any proposal so withdrawn must be made as a complete proposal, subject to the provisions of the RFP. A bidder may revise a proposal any time prior to the bid submittal deadline specified in the Advertisement. Revisions may be made via Internet in accordance with 2-9.1 or by fax in accordance with 2-9.2.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of revisions to proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or non-receipt of revisions to a proposal will not be considered grounds for a bid protest. The Department will not be held responsible if the bidder cannot complete and submit revisions to a bid due to failure or incomplete delivery of the files submitted via the Internet.

2-9.2 Hard Copy Bid Submittals: A bidder may withdraw or revise a proposal after submitting it, provided the Department receives a written request to withdraw or revise the proposal prior to the time set for opening of bids. The resubmission of any proposal withdrawn under this provision is subject to the provisions of the RFP.

Legible facsimile (FAX) proposal changes will be accepted if received in full at the fax number listed in the Bid Solicitation Notice by the time proposals are due on the day of the letting and provided that all of the following conditions are met:

1. The Bidder's name is the same on the faxed proposal change as shown on the original proposal.

2. The proposal change includes the following:

The correct bid item number being changed and the respective unit price change.

The correct revised total per item.

The revised total bid amount.

The signature of the President or Vice President of the Company.

Faxed proposal changes failing to meet all of these requirements will not be considered and will not change the original bid.

The Department will not be responsible for any communications or fax machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of faxed proposal changes as required above either at the Bidder's fax location, at the Department's fax

location, or anywhere between these locations. Receipt or non-receipt of a faxed proposal change will not be considered grounds for a bid protest.

2-10 Opening of Proposals.

The Department will open and publicly announce proposals as described in the RFP. The Department invites bidders, their authorized agents, and other interested parties to attend.

2-11 Disqualification of Bidders.

The Department may disqualify any bidder and reject the bidder's proposal or proposals for any of the following reasons:

- (a) The submission of more than one proposal for the same work from an individual, firm, or corporation under the same or a different name.
- (b) Evidence that one bidder has a financial interest in the firm of another bidder for the same work.
- (c) Evidence of collusion among bidders. The Department will not recognize a participant in such collusion as a bidder for any future work of the Department until the Department reinstates such participant as a qualified bidder.
- (d) Failure to qualify in accordance with 2-1.
- (e) Uncompleted work on other projects that, in the judgment of the Department, could hinder or prevent the prompt completion of the proposed work.
- (f) Failure to pay or satisfactorily settle all bills due for labor and material on other contracts in force at the time of advertisement for bids.
- (g) Default under a previous contract.
- (h) Employment of unauthorized aliens in violation of Section 274A (e) of the Immigration and Nationality Act.
- (i) Falsification on any form required by the Department.
- (j) The submission of a proposal that was not issued by the Department.

SECTION 3 AWARD AND EXECUTION OF CONTRACT

3-1 Consideration of Bids.

For purposes of contract award, after opening and reading the technical and price proposals, the Department will consider as the bid the correct summation of each unit bid price multiplied by estimated quantities shown in the proposal. On this basis, the Department will compare the amounts of each bid and each technical proposal score and make the results of such comparison available to the public. Until the actual award of the Contract, however, the Department reserves the right to reject any or all proposals and to waive technical errors that the Department may deem best for the interest of the State. In the event of any discrepancy in the two entries of the Contract lump sum price, the Department will evaluate the bid based on the lump sum price shown in words.

3-2 Award of Contract.

3-2.1 General: If the Department decides to award the Contract, the Department will award the Contract to the bidder whose proposal complies with all the Contract Document requirements and has the highest overall Price-Proposal Score. If awarded, the Department will award the Contract within 50 days after the opening of the proposals, unless the bidder and the Department extend the time period by mutual consent.

Prior to award of the Contract by the Department, a contractor must provide proof of authorization to do business in the State of Florida.

3-2.2 Bids Exceeding Contractor's Rating: The Department will address bids exceeding a Contractor's rating, and the resulting impact on the Contractor's qualification to bid, in accordance with Florida Administrative Code Rules 14-22.003 and 14-22.009.

The bidder's proposal guaranties are binding for all projects awarded to the Contractor pursuant to the provisions of this Subarticle.

3-3 Cancellation of Award.

The Department reserves the right to cancel the award of any contract at any time before the execution of the contract by all parties, with no compensation due any of the bidders.

3-4 Release of Proposal Guaranty.

The Department will release all proposal guaranties except those of the two lowest bidders immediately following the opening and checking of the proposals. The Department will immediately release the proposal guaranties of the two lowest bidders after the successful bidder delivers the executed contract and a satisfactory bond to the Department, except that the Department will not retain the proposal guaranty of the next-to-lowest bidder longer than 50 days after the opening of the proposals unless the Department awards the contract to the next lowest bidder prior to the expiration of this time limit.

3-5 Contract Bond Required.

3-5.1 General Requirements of the Bond: Upon award, the Contractor shall furnish to the Department, and thereafter continue to furnish to the Department during the term of the Contract, a Payment and Performance Bond guaranteeing the Contractor's contract obligations for each twelve month period of the Contract.

No later than the date of Contract execution the contractor shall provide to the Department a Payment and Performance Bond in a penal sum equal to the first year's annual contract amount under the Contract. Annually thereafter, at least thirty (30) to forty-five (45) days prior to the contract anniversary date, the Contractor shall provide to the Department a Payment and Performance Bond in a penal sum equal to the upcoming year's annual contract amount. Regardless of the number of separate bonds or bond extensions provided by the Surety hereunder, the Surety's liability for each bond or bond extension shall be limited to the contract amount for the twelve (12) month period for which the bond or bond extension is provided.

Each Payment and Performance Bond shall be provided by a surety company authorized to conduct business in the State of Florida. Each Payment and Performance Bond shall be executed only on the forms provided by the Department. Failure to provide any of the required Payment and Performance Bond's to the Department within the aforementioned time frames shall entitle the Department to annul the award, declare the Contractor in default, terminate the Contract, or decline to renew the Contract, all in the Department's sole discretion.

3-5.2 Continued Acceptability of Surety: Provide a surety bond that remains acceptable to the Department throughout the life of the Contract. In the event that the surety executing the bond, although acceptable to the Department at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after the Department's initial approval of the company, then the Department may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company that is reliable and acceptable to the Department. In such an event, the Department will bear all costs of the premium for the new bond, after deducting any amounts that are returned to the Contractor from his payment of premium on the original bond.

3-5.3 Default by Contractor: In case of default on the part of the Contractor, the Department will charge against the bond all expenses for services incidental to ascertaining and collecting losses under the bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

3-5.4 Surety to Furnish Legal Defense as to Payment and Performance Claims or Suits: The surety company shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely do so. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved annual Contract amount, which shall be the original annual Contract amount as may be increased by subsequent Supplemental Agreements.

3-5.5 Liability for Wrongful or Criminal Act by Contractor: The principal and surety executing the bond shall be liable to the State in any civil action that might be instituted by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, his agent or his employees.

3-6 Execution of Contract and Bond.

Within 10 calendar days, excluding Saturdays, Sundays and state holidays, after receipt of the Contract award, execute the necessary agreement(s) to enter into a contract with the Department and return the agreement(s) along with a satisfactory surety bond and documentation evidencing all insurance required by the RFP to the Department's Contracts Office that awarded the Contract. For each calendar day that the successful bidder is late in delivering to the Department's Contracts Office all required documents in properly executed form, the Department will deduct one day from the allowable Contract Time as specified in 8-7.1. The Department will not be bound by any proposal until it executes the associated Contract. The Department will execute the Contract and bond in the manner stipulated in 3-5.1.

The Department will execute the Contract within 5 calendar days, excluding Saturdays, Sundays and state holidays, after receipt of the necessary agreement(s) and bond from the Contractor.

3-7 Failure by Contractor to Execute Contract and Furnish Bond.

In the event that the bidder fails to execute the awarded Contract and to file an acceptable bond, as prescribed in 3-5 and 3-6, within 10 calendar days, excluding Saturdays, Sundays and state holidays, of receipt of the Contract award, the Department may annul the award, causing the bidder to forfeit the proposal guaranty to the Department; not as a penalty but in liquidation of damages sustained. The Department may then award the Contract to the next lowest responsible bidder, re-advertise, or accomplish the work using day labor.

3-8 Audit of Contractor's Records.

Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the prime contractor, the subcontractor, or both. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the project work.

Retain all records pertaining to the Contract for a period of not less than three years from the date of the end of the original contract period or subsequent renewal periods, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the

Department or its representative(s). For the purpose of this Article, records include but are not limited to all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract provisions.

If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department.

3-9 Public Records.

Allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with this Contract. Specifically, if the Contractor is acting on behalf of a public agency, the Contractor must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Contractor.

(2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

The Contractor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Contractor and shall promptly provide the Department a copy of the Contractor's response to each such request. Failure to grant such public access will be grounds for immediate termination of this Contract by the Department pursuant to 8-9.1.

SECTION 4 SCOPE OF THE WORK

4-1 Intent of Contract.

The intent of this Contract is to provide for the contractor's completion in every detail of the work described in the Contract. Furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract Documents.

4-3 Alteration of Plans or of Character of Work.

4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:

A Supplemental Agreement or Unilateral Payment will be used to clarify the Plans and Specifications of the Contract; to provide for extra Work which could not reasonably have been contemplated or foreseen in the original Scope to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

4-3.7 Differing Site Conditions: During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has provided the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

4-3.8 Changes Affecting Utilities: The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design, maintenance, or construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, joint project agreements or utility relocation schedules.

4-5 Rights in and Use of Materials Found on the Site of the Work.

4-5.1 Ownership and Disposal of Existing Materials:

Take ownership and dispose of all materials that are not designated as the property of other parties, in both roadway and structures, found on the right-of-way, and all material in structures designated for removal. Such materials do not include earth or other excavated material required for the maintenance of the project, or material otherwise exempted by Department policy or procedure. During maintenance, the Contractor may use materials from existing structures that are required to be removed and that are designated to remain the property of the Department. Do not cut or otherwise damage such material during removal unless the Engineer gives permission to do so. Store material in an accessible location as the Engineer directs. The Department is not responsible for the quality or quantity of any material salvaged.

SECTION 5 CONTROL OF THE WORK

5-2 Coordination of Contract Documents.

All contract documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. All parts of the Contract are complementary and describe and provide for a complete work.

In cases of discrepancy, the governing order of the documents is as follows:

1. RFP
2. Scope of Services, excluding attachments and referenced Contract Documents
3. Design Standards
4. STANDARD ASSET MAINTENANCE SPECIFICATIONS GENERAL REQUIREMENTS AND COVENANTS (Scope of Services Attachment II)
5. Other Attachments in the Scope of Services
6. Div II & III of the Standard Specifications for Road and Bridge Construction
7. All other Contract Documents that are incorporated by reference into the Scope of Services

5-3 Conformity of Work with Contract Documents.

Perform all work and furnish all materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, as specified in the Contract Documents.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, but that the Contractor has produced reasonably acceptable work, the Engineer will determine if the Department will accept the work in place. In this event, the Engineer will document the basis of acceptance by Contract modification, which provides for an appropriate reduction in the Contract price for such work or materials included in the accepted work as deemed necessary to conform to the determination based on engineering judgment.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, and that the Contractor has produced an inferior or unsatisfactory product, the Contractor shall remove and replace or otherwise correct the work or materials at no expense to the Department.

For base and surface courses, the Department will allow the finished grade to vary as much as 0.1 foot from the grade shown in the plans, provided that the Contractor's work meets all templates and straightedge requirements and contains suitable transitions.

5-4 Errors or Omissions in Contract Documents.

Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

5-5 Authority of the Engineer.

The Director, Office of Maintenance will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

5-6 Authority and Duties of Engineer's Assistants.

The Director, Office of Maintenance may appoint such assistants and representatives as he desires. These assistants and representatives are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of these Specifications. Rather, they are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents, and have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately notify the Contractor in writing of any such suspension of the work, stating in detail the reasons for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

5-8 Contractor's Supervision.

5-8.1 Prosecution of Work: Give the work the constant attention necessary to ensure the scheduled progress, and cooperate fully with the Engineer and with other contractors at work in the vicinity.

5-8.2 Contractor's Superintendent: Maintain a competent superintendent to act as the Contractor's agent. Provide a superintendent who is a competent superintendent capable of properly interpreting the Contract Documents and is thoroughly experienced in the type of work being performed. Provide a superintendent with the full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. Furnish such superintendence regardless of the amount of work sublet.

Provide a superintendent who speaks and understands English, and maintain at least one other responsible person who speaks and understands English, on the project during all working hours.

5-8.3 Supervision for Emergencies: Provide a responsible person, who speaks and understands English, and who is available at or reasonably near the worksite on a 24 hour basis, seven days a week. Designate this person as the point of contact for emergencies and in cases that require immediate action to maintain traffic or to resolve any other problem that might arise. Submit, by certified mail, the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the project location, to the Florida Highway Patrol and all other local law enforcement agencies.

5-9 General Inspection Requirements.

5-9.1 Cooperation by Contractor: Upon request, furnish the Engineer with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If the Engineer so requests at any time, remove or uncover portions of finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. If the Engineer determines that the work so exposed or examined is unacceptable, perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Department. However, if the Engineer determines that the work thus exposed or examined is acceptable, the Department will pay for the actual costs incurred by uncovering or removing, and the replacing of the covering or making good of the parts removed.

5-9.2 Failure of Engineer to Reject Work: If, during or prior to Work, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such

defect is discovered, or obligates the Department to final acceptance. The Department is not responsible for losses suffered due to any necessary removals or repairs of such defects.

5-9.3 Failure to Remove and Renew Defective Materials and Work: If the Contractor fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the Contractor's expense. The Department will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Contractor fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.

5-12 Claims by Contractor.

5-12.1 General: When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

If such claim arises from the "substantial financial impact of 5%" clause described in the AM Scope of Services, and the Contractor believes the 5% threshold has been reached, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

5-12.2 Notice of Claim:

5-12.2.1 Claims For Extra Work: Where the Contractor deems that additional compensation is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, and equipment, the Contractor waives the claim for additional compensation. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after the end of the original contract period or subsequent renewal periods, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after the end of the original contract period or subsequent renewal periods, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

5-12.3 Content of Written Claim: As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

(a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;

(b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;

(c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;

(d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

(e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:

(1) documented additional job site labor expenses;

(2) documented additional cost of materials and supplies;

(3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;

(4) any other additional direct costs or damages and the documents in support thereof;

(5) any additional indirect costs or damages and all documentation in support thereof.

(f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

5-12.4 Action on Claim: The Engineer will respond on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or

arbitration proceedings on any claim, or a part thereof, may be filed until after the end of the original contract period or subsequent renewal periods.

5-12.5 Pre-Settlement and Pre-Judgment Interest: Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

5-12.7 Mandatory Claim Records: After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

5-12.8 Claims For Acceleration: The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

5-12.9 Certificate of Claim: When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

5-12.10 Non-Recoverable Items: The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;
- b. Any claim for other than extra work or delay;
- c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense"; nor
- e. Attorney fees, claims preparation expenses and costs of litigation.

5-12.11 Exclusive Remedies: Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the

event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

5-12.12 Settlement Discussions: The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

5-12.13 Personal Liability of Public Officials: In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

5-12.14 Auditing of Claims: All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request for copies provide copies at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;

14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

5-13 Recovery Rights, Subsequent to Final Payment.

The Department reserves the right, if it discovers an error in payment or if it discovers that the Contractor performed defective work or used defective materials, after the final payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

SECTION 7 LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC

7-1 Laws to be Observed.

7-1.1 General: Become familiar with and comply with all Federal, State, county, and city laws, by-laws, ordinances, and regulations that control the action or operation of those engaged or employed in the work or that affect materials used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 17-5 of the Rules and Regulations, pertaining to open burning in land clearing operations. Where work or structures included in the Contract are in "Navigable Waters of the U.S.," (reference 33 of the Code of Federal Regulations, Part 329); "Waters of the U.S.," (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or "Waters of the State," (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, of the Florida Statutes regarding land reclamation. Direct special attention to Chapters 62c-36 and 62c-39 of the Florida Administrative Code. Submit the Notice of Intent to Mine to:

Department of Environmental Protection
Collins Building
2051 East Dirac Drive
Tallahassee, Florida 32310-3760

with a copy to the Engineer. The Engineer will determine consistency with the environmental documents prior to commencement of mining.

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, of the Florida Statutes, regardless of exemptions allowed by Section 489.103, prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

Prior to building construction, maintenance or renovation, provide copies of current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Chapter 489, for the appropriate category of construction or maintenance.

Corporations must be registered with the State of Florida, Department of State, Division of Corporations, and hold a current State Corporate Charter Number in accordance with Chapter 607, Florida Statutes.

The Contractor or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, order, or decrees; whether by himself or his employees.

The Contractor shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES) Stormwater Pollution Prevention Plan and Sediment and Erosion Control Plan for the work.

The Contractor shall exert every reasonable and diligent effort to ensure that all labor employed by the Contractor and his subcontractors for work on the project work harmoniously and compatibly with all labor used by other building, maintenance and construction contractors now or hereafter on the site of the work covered by this Contract. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others. However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

The Executive Order 11246 Electronic version, dated September 24, 1965 is posted on the Department's website at the following URL address:
www.dot.state.fl.us/specificationsoffice/federal/deo11246.pdf . Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

7-1.2 Plant Quarantine Regulations: The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule 5B-44, Florida Administrative Code, and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the maintenance period.

These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of materials containing plant pests across quarantine lines.

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service
U.S. Department of Agriculture
3029 Lake Alfred Road
Winter Haven, Florida 33881

Director, Division of Plant Industry
Florida Department of Agriculture and Consumer Services
Post Office Box 147100
Gainesville, Florida 32614-7100

7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds: Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 16C-52 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

7-1.4 Compliance with Federal Endangered Species Act and other Wildlife Regulations: The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed on the plans or in permits as identified in 7-2.1.

In addition, in cases where certain protected, threatened or endangered species are found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address:
<http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/endangeredwildlifeguidelines.pdf>.

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, the name of the property owner, and a person to contact to arrange a site inspection. Provide this notification sufficiently in advance of planned commencement of

the off-site activity, to allow a reasonable period of time for the Engineer to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event the Department's investigation determines a potential impact to a protected, threatened or endangered species and mitigation measures or permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities.

7-1.5 Occupational Safety and Health Requirements: The Contractor shall take all precautions necessary for the protection of life, health, and general occupational welfare of all persons, including employees of both the Contractor and the Department, until the Contractor has completed the work required under the Contract as provided in 5-10 and 5-11.

Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including 29 CFR 1926, including all subsequent revisions and updates.

7-1.6 Discovery of an Unmarked Human Burial: When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. Do not resume activity until specifically authorized by the Engineer.

7-1.7 Insecticides and Herbicides: Use products found on the following website, www.flpesticide.us/, approved by the Florida Department of Agriculture for the State of Florida. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work.

Ensure that all individuals applying insecticides and herbicides possess a current Florida Department of Agriculture Commercial Applicator license with the categories of licensure in Right-of-Way Pest Control and Aquatic Pest Control, or are under direct supervision of a licensed applicator as allowed by statute and Department procedure. Provide a copy of current certificates upon request, to the Engineer.

Ensure that employees who work with herbicides comply with all applicable Federal, State, and local regulations.

Comply with all regulations and permits issued by any regulatory agency within whose jurisdiction work is being performed. Post all permit placards in a protected, conspicuous location at the work site.

Acquire any permits required for work performed on the rights-of-way within the jurisdiction of National Forests in Florida. Contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office for the proper permits and subsequent approval.

Acquire all permits required for aquatic plant control as outlined in Chapter 62C-20, Florida Administrative Code, Rules of the Florida Department of Environmental Protection. Contact the Regional Field Office of Bureau of Invasive Plant Management of the Florida Department of Environmental Protection for proper permits and subsequent approval. If application of synthetic organo-auxin herbicides is necessary, meet the requirements of Chapter 5E-2, Florida Administrative Code.

7-1.8 Compliance with Section 4(f) of the USDOT Act: Section 4(f) of the USDOT Act prohibits the U. S. Secretary of Transportation from approving a project which requires the use of publicly owned land of a public park, recreation area or a wildlife and waterfowl refuge, or of any historic site of national, state, or local significance unless there is no prudent or feasible

alternative to using that land and the program or project includes all possible planning to minimize the harm to the site resulting from the use.

Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources Survey discussed in 120-6.2). If such a site is proposed, notify the Engineer and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county or city map showing the site location and including the access route and the name of the property. It is the Contractor's responsibility to provide justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Provide this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

7-2 Permits and Licenses.

7-2.1 General: All Permits procured by the Department are posted on the Department's website at the following URL address: <ftp.dot.state.fl.us/permitsandutilityworkschedules/>. Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Acquire all permits for work performed outside the right-of-way or easements for the project.

In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and other Contract Documents, the more stringent condition shall prevail.

7-2.2 Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State: In general, one or more governmental agencies will exercise regulatory authority over work or structures, including related construction operations, in all tidal areas (Channelward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and in all tributaries of navigable waters up to their headwaters.

Whenever the work under or incidental to the Contract requires structures or dredge/fill/construction activities in "Navigable Waters of the U.S.," "Waters of the U.S.," and "Waters of the State," the Federal, State, county, and local regulatory agencies may require the Department to obtain a permit. Obtain such permit when needed if possible. If the permitting agency will not issue the permit to the contractor, the Department will obtain the needed permit.

The "State of Florida Department of Environmental Protection (DEP) Generic Permit for Stormwater Discharge from Large and Small Construction Activities" applies to this Contract. Obtain a copy of the permit through the Department's website and comply with the requirements of the permit. The URL for obtaining a copy of the permit is www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/DEPPermit.pdf. If the

Department's web site cannot be accessed, contact the Department's Specifications Office Web Coordinator.

In accordance with the requirements of the DEP generic permit, accept responsibility for the following:

- (a) Preparation, execution and submission of DEP Generic Permit Notice of Intent (NOI) and payment of associated fee(s)
- (b) Preparation and submission of Erosion Control Plan as outlined in Section 104
- (c) Any Contractor initiated SWPPP modifications
- (d) Performing inspections using a qualified inspector
- (e) Completion of SWPPP construction inspection reports
- (f) Executing associated certification forms provided by the Engineer
- (g) Preparation, execution and submission of Notice of Termination (NOT) of the DEP Generic Permit coverage.

Use the SWPPP Construction Inspection Form provided by the Engineer to report all inspection findings and to document all corrective actions taken as a result of the inspection. Sign each inspection report and submit it weekly to the Engineer.

7-2.3 As-Built Drawings and Certified Surveys:

7-2.3.1 Surface Water Management Systems for Water Management

Districts: As a condition precedent to the end of the original contract period or subsequent renewal periods, submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions for all installed and constructed surface water management systems. The as-built drawings and certified survey must satisfy all the requirements and special conditions listed in the Water Management District's Environmental Resource Permit (ERP) and any applicable local permit. The as-built drawings and certified survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

If the ERP does not contain specific requirements, provide as-built drawings with the following information as a minimum:

1. Discharge structures: structure identification number, type, locations (latitude and longitude), dimensions and elevations of all, including weirs, bleeders, orifices, gates, pumps, pipes, and oil and grease skimmers.
2. Side bank and underdrain filters, or exfiltration trenches: locations, dimensions and elevations of all, including clean-outs, pipes, connections to control structures and points of discharge to receiving waters.
3. Storage areas for treatment and attenuation: storage area identification number, dimensions, elevations, contours or cross-sections of all, sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems.
4. System grading: dimensions, elevations, contours, final grades or cross-sections to determine contributing drainage areas, flow directions and conveyance of runoff to the system discharge points.
5. Conveyance: dimensions, elevations, contours, final grades or cross-sections of systems utilized to divert off-site runoff around or through the new system.
6. Water levels: existing water elevations and the date determined.
7. Benchmarks: location and description (minimum of one per major water control structure).

7-2.3.2 Bridge Clearances for Projects under the Authority of a U.S. Coast

Guard Permit: As a condition precedent to the end of the original contract period or subsequent renewal periods, submit to the Engineer a certified survey verifying the as-built clearances described in the U.S. Coast Guard Owner's Certification of Bridge Completion. The certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and

Mapper registered in the State of Florida.

7-2.3.3 Projects Under the Authority of a U.S. Army Corps of Engineers

Permit: As a condition precedent to the end of the original contract period or subsequent renewal periods, submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions. The as-built drawings and certified survey must satisfy all of the requirements and special conditions listed in the U.S. Army Corps of Engineers permit. The as-built drawings and certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

7-3 Patented Devices, Materials and Processes.

Include all royalties and costs arising from patents, trademarks, and copyrights, in any way involved in the work in the Contract price. Whenever using any design, device, material, or process covered by letters patent or copyright, obtain the right for such use by suitable legal agreement with the patentee or owner of the copyright. File a copy of such agreement with the Engineer. However, whether or not such agreement is made or filed as noted, the Contractor and the surety in all cases shall indemnify, defend, and save harmless, the Department from all claims for infringement by reason of the use of any such patented design, device, material, or process on work under the Contract, and shall indemnify the Department for all costs, expenses, and damages that it may be obliged to pay by reason of any such infringement, at any time during the prosecution or after the completion of the work.

7-4 Right-of-Way Furnished by the Department.

Use of Department owned right-of-way for the purpose of equipment or material storage, lay-down facilities, pre-cast material fabrication sites, batch plants for the production of asphalt, concrete or other construction or maintenance related materials, or other similar activities, shall require advance written approval by the Department prior to making use of said Department owned right of way. Use of Department owned right of way for these purposes is expressly limited to storage of equipment and materials for the Project or production of materials or products for the Project.

7-5 Restoration of Surfaces Opened by Permit.

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair work will be paid for by the party holding such permit, the Engineer may authorize the Contractor to allow parties bearing such permits to make openings in the highway. Upon the Engineer's written order, perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary work that the Engineer orders, subject to the same conditions as the original work performed. The Department will pay the Contractor for such work either under applicable Contract items or in accordance with 4-4 when Contract items are not applicable.

7-6 Sanitary Provisions.

The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of his employees as are necessary to comply with the requirements and regulations of the State and local boards of health. Commit no public nuisance.

7-7 Control of the Contractor's Equipment.

7-7.1 Traffic Interference: Do not allow equipment, while it is on or traversing a road or street, to unreasonably interfere with traffic.

7-7.2 Overloaded Equipment: Do not operate on any road or street any hauling unit or equipment loaded in excess of (1) the maximum weights specified in the Florida Uniform Traffic

Control Law, or (2) lower weights legally established for any section of road or bridge by the Department or local authorities. The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of 7-7.3. This restriction applies to all roads and bridges inside and outside the Contract limits as long as these roads and bridges are open for public use. The Contractor may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Contractor is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

7-7.3 Crossings: Where it is necessary to cross an existing road or street, including specifically the existing traveled lanes of a divided highway within the limits of the project, obtain permits from the Department, for crossing overloaded or oversized equipment. Cross existing roads or streets only at Engineer-designated points. The Engineer may require the Contractor to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. Provide flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

7-7.4 Protection from Damage by Tractor-Type Equipment: Take positive measures to ensure that tractor-type equipment does not damage the road. If any such damage should occur, repair it without delay, at no expense to the Department and subject to the Engineer's approval.

7-7.5 Contractor's Equipment on Bridge Structures: The Contractor's Engineer of Record shall analyze the effect of imposed loads on bridge structures, within the limits of the contract, resulting from the following operations:

- (1) Overloaded Equipment as defined in 7-7.2:
 - (a) Operating on or crossing over completed bridge structures.
 - (b) Operating on or crossing over partially completed bridge structures.
- (2) Equipment within legal load limits:
 - (a) Operating on or crossing over partially completed bridge structures.
- (3) Construction and Maintenance cranes:
 - (a) Operating on completed bridge structures.
 - (b) Operating on partially completed bridge structures.

Any pipe culvert(s) or box culvert(s) qualifying as a bridge under 1-3 is excluded from the requirements above.

A completed bridge structure is a bridge structure in which all elemental components comprising the load carrying assembly have been completed, assembled, and connected in their final position. The components to be considered shall also include any related members transferring load to any bridge structure.

The Contractor's Engineer of Record shall determine the effect that equipment loads have on the bridge structure and develop the procedures for using the loaded equipment without exceeding the structure's design load capacity.

7-7.6 Posting of the Legal Gross Vehicular Weight: Display the maximum legal gross weight, as specified in the Florida Uniform Traffic Code, in a permanent manner on each side of any dump truck or dump type tractor-trailer unit hauling embankment material, aggregates, road base material, or hot bituminous mixture to the project over any public road or street. Display the weight in a location clearly visible to the scale operator, in numbers that contrast in color with the background and that are readily visible and readable from a distance of 50 feet.

7-8 Structures over Navigable Waters.

7-8.1 Compliance with Federal and Other Regulations: Where erecting structures in, adjacent to, or over, navigable waters, observe all regulations and instructions of Federal and

other authorities having control over such waters. Do not obstruct navigation channels without permission from the proper authority, and provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, of false work, and of navigation.

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

When work platforms are indicated in the permit for construction or maintenance, submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

7-8.2 Maintenance of Channel: Where the work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment until the end of the original contract period or subsequent renewal periods.

7-9 Use of Explosives.

When using explosives for the prosecution of the work, exercise the utmost care not to endanger life or property, including new work. The Contractor is responsible for all damage resulting from the use of explosives.

Store all explosives in a secure manner in compliance with all laws and ordinances, and clearly mark all such storage places with the words: "DANGEROUS - EXPLOSIVES". Place such storage in the care of a competent watchman. Where no local laws or ordinances apply, provide storage satisfactory to the Engineer and, in general, not closer than 1,000 feet from the road or from any building, camping area, or place of human occupancy.

Notify each public utility company having structures in proximity to the site of the work of the intention to use explosives. Give such notice sufficiently in advance to enable the companies to take precautionary steps to protect their property from injury.

7-10 Forest Protection.

7-10.1 Compliance with State and Federal Regulations: In carrying out work within or adjacent to State or National forests or parks, comply with all of the regulations of the State or Federal authority having jurisdiction, governing the protection of and the carrying out of work in forests or parks, and observe all sanitary laws and regulations with respect to the performance of work in these areas. Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction, installation, and maintenance of any camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the forest or park official.

7-10.2 Prevention and Suppression of Forest Fires: Take all reasonable precautions to prevent and suppress forest fires. Require employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress forest fires. Assist in preventing and suppressing forest fires, and make every possible effort to notify a forest official at the earliest possible moment of the location and extent of all fires. Extinguish the fire if practicable.

7-11 Preservation of Property.

7-11.1 General: Preserve from damage all property which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not specified in the plans. This applies to public and private property, public and private utilities (except as modified by the provisions of 7-11.6), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor), etc., Whenever the Contractor's activities damage

or injure such property, immediately restore it to a condition similar or equal to that existing before such damage occurred, at no expense to the Department.

Protect existing bridges during the entire maintenance period from damage caused by the construction or maintenance operations or equipment. . However, immediately repair, at no expense to the Department, all damage occasioned by the construction or maintenance operations. In the event that the Contractor's construction or maintenance operations result in damage to a bridge requiring repairs, the Contractor shall make such repairs with any equipment, materials, or labor at the Contractor's disposal prior to continuing Contract work.

Direct special attention to the protection of all geodetic monuments, horizontal or vertical, located within the limits of maintenance.

7-11.2 Failure to Restore Damaged Property: In case of failure on the part of the Contractor to restore such property, bridge, road or street, or to make good such damage or injury, the Engineer may, upon 48 hours notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any monies due or which may become due the Contractor under the Contract. Nothing in this clause prevents the Contractor from receiving proper compensation for the removal, damage, or replacement of any public or private property, not shown on the plans, that is made necessary by alteration of grade or alignment. The Engineer will authorize such work, provided that the Contractor, or his employees or agents, have not, through their own fault, damaged such property.

7-11.3 Contractor's Use of Streets and Roads:

7-11.3.1 On Systems Other than the State Highway System: When hauling materials or equipment to the project over roads and bridges on the State park road system, county road system, or city street system, and such use causes damage, immediately, at no expense to the Department, repair such road or bridge to as good a condition as before the hauling began.

The Department may modify the above requirement in accordance with any agreement the Contractor might make with the governmental unit having jurisdiction over a particular road or bridge, provided that the Contractor submits written evidence of such agreement to the Engineer.

7-11.3.2 On the State Highway System: The Department is responsible for the repair of any damage that hauling materials to the site causes to roads outside the limits of the project, that are either on the State highway system (roads under the jurisdiction of the Department) or specifically designated in the plans as haul roads from Department-furnished material pits, except in the event damage is due to failure to comply with 7-7.2. The Contractor is responsible for all damages to any road or bridge caused by the Contractor's failure to comply with 7-7.2.

7-11.3.3 Within the Limits of a Maintenance Project: The Department will not allow the operation of equipment or hauling units of such weight as to cause damage to previously constructed elements of the project, including but not necessarily limited to bridges, drainage structures, base course, and pavement. Do not operate hauling units or equipment loaded in excess of the maximum weights specified in 7-7.2 on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement, and bridges. The Engineer may allow exceptions to these weight restrictions for movement of necessary equipment to and from its worksite, for hauling of offsite fabricated components to be incorporated into the project, and for crossings as specified in 7-7.3.

7-11.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardrail: Protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal

equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

If the Department determines that damage to such existing traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department.

7-11.5 Operations Within Railroad Right-of-Way:

7-11.5.1 Notification to the Railroad Company:

Notify the superintendent of the railroad company and the Engineer at least 72 hours before beginning any operation within the limits of the railroad right of way; any operation requiring movement of employees, trucks, or other equipment across the tracks of the railroad company at other than an established public crossing; and any other work that may affect railroad operations or property.

7-11.5.2 Contractor's Responsibilities:

Comply with requirements an authorized representative of the railroad company deems necessary in order to safeguard the railroad's property and operations. Specifically, comply with the Construction Submission Criteria of the CSX Transportation (CSXT) Public Project Information document and Construction Requirements sections of the CSXT Pipeline and Wireline Design and Construction Specifications prior to beginning work. These documents are available at the following URL:

<http://www.dot.state.fl.us/specificationoffice/Implemented/URLInSpecs/Files/CSXspecs.pdf>.

The Contractor is responsible for all damages, delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Contractor's operations within or adjacent to railroad company right of way.

7-11.5.3 Watchman or Flagging Services:

The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the project. The Contractor shall reimburse the railroad company for the cost thereof. Schedule work that affects railroad operations so as to minimize the need for protective services by the railroad company.

Coordinate the schedule all flagging resources. Submit schedules and schedule changes to the Engineer so the Department will be informed of activities. Projects with less than 20 consecutive days of flagging services require a CSXT short-term flagger and 45 days written advance notice. Provide the 45 days written advance notice to the Engineer. Projects with 20 or more consecutive days of flagging services require a CSXT long term flagger. Provide the 6 months written advance notice to CSXT.

7-11.6 Utilities:

7-11.6.1 Arrangements for Protection or Adjustment: Do not commence work at points where the construction or maintenance operations are adjacent to utility facilities until all necessary arrangements have been made for removal, temporary removal, relocation, de-energizing, deactivation or adjustment with the utility facilities owner to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Contractor is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Contractor's operations.

7-11.6.2 Cooperation with Utility Owners: Cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that

these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support, promptly notify the proper authority and cooperate with the authority in the prompt restoration of service. If water service is interrupted and the Contractor is performing the repair work, the Contractor shall work continuously until the service is restored. Do not begin work around fire hydrants until the local fire authority has approved provisions for continued service.

7-11.6.3 Utility Adjustments: Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Cooperate with the various utility construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Contractor shall repair all damage to the relocated utilities resulting from his operations at no expense to the Department. The requirements of 7-11.1 and 7-11.6.2 outline the Contractor's responsibility for protecting utility facilities. The Department will include in the Contract the utility authorities who are scheduled to perform utility work on the project.

7-12 Responsibility for Damages, Claims, etc.

7-12.1 Contractor to Provide Indemnification: The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the maintenance Contract.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

7-12.2 Guaranty of Payment for Claims: The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

7-13 Insurance.

The Contractor must have and maintain during the initial term of this contract and all renewal periods, the following policies/coverages, with a company authorized to do business in Florida:

7-13.1 Workers' Compensation Insurance: Provide Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law for all employees. If subletting any of the work, ensure that the employees of the subcontractors are covered by similar insurance. Ensure that any equipment rental agreements that include operators who are employees of independent Contractors, sole proprietorships or partners are covered by similar insurance. The Engineer will accept equivalent approved protection in lieu of insurance.

7-13.2 Liability Insurance:

7-13.2.1 Comprehensive General Liability Insurance: Obtain coverage providing Combined Single Limits of One million dollars (\$1 million) per occurrence, Five million dollars (\$5 million) annual aggregate, and Products/completed operations with an annual aggregate of at least Two million dollars (\$2 million). The Comprehensive General Liability

coverages may be provided in a single policy or in combination with an Umbrella/Excess policy (Occurrence) having limits of Four million dollars (\$4 million) each occurrence and annual aggregate. The umbrella/excess liability insurance policy or specific excess policy shall provide coverages that are no less broad than those provided by the scheduled underlying primary policies. Policy inception and expiration dates must also be concurrent with the inception and expiration dates of the primary underlying liability policies. The Contractor shall cause the Department to be an additional insured party on the Comprehensive General Liability and Umbrella/Excess insurance policies that insure the Contractor for the work that it performs under the Contract.

7-13.2.2 Automobile Liability Insurance: Obtain coverage providing a Combined Single Limit (each accident) of One million dollars (\$1 million) for: "Any Auto, All Owned Autos and Hired Autos." The Contractor shall cause the Department to be an additional insured party on the Automobile Liability policy that insures the Contractor for the work that it performs under the Contract.

7-13.2.3 Professional Liability Insurance: Obtain coverage affording Professional Liability Coverage for the professional services to be rendered in accordance with this contract in the amount of at least \$1,000,000.

7-13.2.4 Certificates and Policies: Submit certificates of insurance reflecting the foregoing coverages and copies of policy endorsements causing the Department to be an additional insured on the respective policies prior to contract execution. Within 30 days after execution of the contract the Contractor will provide to the Department a complete copy of all insurance policies.

7-13.4 Insurance Required for Construction and Maintenance at Railroads:

7-13.4.1 General: In addition to any other forms of insurance or bonds required under the terms of the Contract, when the Contract includes the construction or maintenance of a railroad grade crossing, overpass, or underpass structure, or a railroad crossing signal installation, or any other work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, provide insurance of the types set forth below and in amounts not less than specified herein.

7-13.4.2 Railroads' Protective Public Liability and Property Damage Liability Insurance: Furnish the Department with an original insurance policy that, with respect to the operations performed, will provide for and in behalf of the railroad company regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the time period that the Contractor is actively performing Work within railway limits. Furnish the Department with the railroad insurance policy prior to the time the Contractor commences performing the Work.

7-13.4.3 CSXT Protective Public Liability and Property Damage Liability Insurance: During the time period that the Contractor is actively performing Work within CSXT railway limits, furnish the Department with the following original insurance policies and two copies, along with all notices and correspondence regarding the insurance policies that, with respect to the operations performed, will provide for and in behalf of the Railroad:

Railroad protective liability insurance providing coverage for bodily injury and property damage limited to a combined single limit of \$5,000,000 per occurrence with an aggregate annual limit of \$10,000,000 for the term of the policy for this specific project. The insurance shall satisfy the following additional requirements:

1. All insurance companies must be A.M. Best rated A- and Class VII or better.

2. The Railroad protective insurance policy must be on the Insurance Services Office (ISO)/RIMA Form of Railroad Protective Insurance – ISO Form CG 00 35.

3. The Railroad must be named insured on the Railroad protective insurance policy.

4. Name and address of Contractor and Department must be shown on the Declarations page.

5. Description of operations must appear on the Declarations page and must match the project description, including project or contract identification numbers.

6. Authorized endorsements must include the Pollution Exclusion Amendment CG 28 31 – unless using form CG 00 35 version 96 and later.

7. Authorized endorsements may include:

- a. Broad Form Nuclear Exclusion – IL 00 21.
- b. 30 day Advance Notice of Non-Renewal or Cancellation.
- c. Required State Cancellation Endorsement.
- d. Quick Reference or Index – CL/IL 240

8. Authorized endorsements may not include:

- a. A Pollution Exclusion Endorsement except CG 28 31.
- b. A punitive or Exemplary Damages Exclusion.
- c. A “Common Policy Conditions” Endorsement.
- d. Any endorsement that is not named in 6 or 7 above.
- e. Policies that contain any type of deductible.

9. Such additional or different insurance as the Railroad may require.

Provide Commercial General Liability coverage with limits of not less than \$5,000,000 in combined single limits for bodily injury and property damage per occurrence. Such policies shall name the Railroad as an additional insured.

Provide Statutory Worker’s Compensation and Employers Liability Insurance with limits of not less than \$1,000,000. The insurance must contain a waiver of subrogation against the Railroad and its affiliates.

Provide Commercial Automobile Liability Insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence. Such policies shall designate the Railroad as an additional insured.

Construction or other work as described in Subarticle 7-13.4.1 General shall not begin on the project until the Department receives written approval from the Railroad of the required insurance policies.

7-13.5 Insurance for Protection of Utility Owners: When the work under the Contract involves work on or in the vicinity of utility-owned property or facilities, furnish the Department with evidence that, with respect to the operations performed, General Comprehensive Liability Insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence is carried. The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. Do not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.

7-13.6 Submission and Approval of Policies; Termination: Provide all insurance policies in such form and with insurers that are acceptable to the Department, and to the railroad company or the utility owner. Keep insurance in behalf of a railroad company in force until the Department accepts that the Contractor has satisfactorily completed all work

required under the Contract. Keep insurance in behalf of a utility owner in force, in the full amount specified herein, until 30 days after the Department accepts the work.

7-14 Contractor's Responsibility for Work.

Until the Department's acceptance of the work under each work order, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good, without additional expense to the Department, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damage, the Department may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

7-15 Opening Sections of Highway to Traffic.

Whenever any bridge or section of roadway is in acceptable condition for travel, the Engineer may direct the Contractor to open it to traffic. The Department's direction to open a bridge or roadway does not constitute an acceptance of the bridge or roadway, or any part thereof, or waive any Contract provisions. Perform all necessary repairs or renewals, on any section of the roadway or bridge thus opened to traffic under instructions from the Engineer, due to defective material or work or to any cause other than ordinary wear and tear, pending completion and the Engineer's acceptance of the roadway or bridge, or other work, at no expense to the Department.

7-16 Wage Rates for Federal-Aid Projects.

For all projects that include Federal-aid participation, the Special Provisions contain requirements with regard to payment of predetermined minimum wages. Predetermined Wage Rate Decisions (U.S. Department of Labor provided Wage Rate Tables) exist for Heavy, Highway, and Building Construction Projects.

7-17 Supplemental Agreements.

Section 337.11 of the Florida Statutes as amended, which prescribe certain limitations on the use of supplemental agreements and unilateral payments, are a part of the Contract.

7-19 Source of Forest Products.

As required by Section 255.20 of the Florida Statutes, where price and quality are equal, and when available, use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida. This provision does not apply to Federal-aid projects.

7-20 Regulations of Air Pollution from Asphalt Plants.

7-20.1 General: Perform all work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 17-2 and 17-5 of the Rules and Regulations of the Department of Environmental Protection, and to any part of the State Implementation Plan applicable to the project. See also 110-9.2 regarding burning of debris.

7-20.2 Dust Control: Ensure that excessive dust is not transported beyond the limits of construction in populated areas. The Contractor may control dust for embankments or other cleared or unsurfaced areas by applying water or calcium chloride, as directed by the Engineer. Use calcium chloride in accordance with 102-5. When included in the plans, install

mulch, seed, sod, or temporary paving as early as practical. Control dust during the storage and handling of dusty materials by wetting, covering, or other means as approved by the Engineer.

7-20.3 Asphalt Material: Use only emulsified asphalt, unless otherwise stated in the plans and allowed by Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

7-20.4 Asphalt Plants: Operate and maintain asphalt plants in accordance with Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Provide the plant site with a valid permit as required under Chapter 17-2 prior to start of work.

7-21 Dredging and Filling.

Section 370.033 of the Florida Statutes, requires that all persons, who engage in certain dredge or fill activities in the State of Florida, obtain a certificate of registration from the Florida Department of Environmental Protection, Tallahassee, Florida 32301, and that they keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection.

7-22 Available Funds.

For Contracts in excess of \$25,000 or a term for more than one year, comply with the following provisions of Chapter 339 of the Florida Statutes:

The Department will not, during any fiscal year, expend money, incur any liability, or enter into any Contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If the Department enters into such a Contract, verbal or written, in violation of this subsection, such Contract is null and void, and the Department will not make any payments thereon. The Department will require a statement from the Department's comptroller that funds are available prior to entering into any such Contract or other binding commitment of funds. Nothing herein contained prevents the Department from executing Contracts for a period exceeding one year, but the Department will make such Contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. The Department will incorporate this paragraph verbatim in all Contracts in excess of \$25,000 or having a term for more than one year.

7-23 Contractor's Motor Vehicle Registration.

The Contractor shall provide the Department with proof that all motor vehicles operated or caused to be operated by such Contractor are registered in compliance with Chapter 320 of the Florida Statutes.

Submit such proof of registration in the form of a notarized affidavit to the Department.

The Department will not make payment to the Contractor until the required proof of registration is on file with the Department.

If the Contractor fails to register any motor vehicle that he operates in Florida, pursuant to Chapter 320 of the Florida Statutes, the Department may disqualify the Contractor from bidding, or the Department may suspend and revoke the Contractor's certificates of qualification.

7-24 Disadvantaged Business Enterprise Program.

7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan: Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

7-24.2 Required Contract and Subcontract DBE Assurance Language: In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.”

7-24.3 Plan Requirements: Include the following in the DBE Affirmative Action Program Plan:

(a) A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor’s organization.

(b) The designation of a Liaison Officer within the Contractor’s organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

(c) Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs to apply for certification with the Department.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

7-24.4 DBE Records and Reports: Submit the following through the Equal Opportunity compliance System:

1. Anticipated DBE Participation Statement - within 3 business days after the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department’s Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

(a) the procedures adopted to comply with these Specifications;

(b) the number of subordinated Contracts on Department projects awarded to DBEs;

- (c) the dollar value of the Contracts awarded to DBEs;
- (d) the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;
- (e) a description of the general categories of Contracts awarded to DBEs; and
- (f) the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the Department for review.

Maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

7-24.5 Counting DBE Participation and Commercially Useful Functions: 49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. On the Anticipated DBE Participation Statement only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Submit a revised Anticipated DBE Participation Statement to reflect changes to the initial Anticipated DBE Participation Statement within 14 business days from the date of the change.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, for example:

(a) The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.

(b) The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

(c) When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(d) When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

(e) The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function in the work of a contract may be counted toward the voluntary DBE goal.

(f) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(g) To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(h) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

(i) If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

7-24.6 Prompt Payments: Meet the requirements of 9-5 for payments to all DBE subcontractors.

7-28 E-Verify.

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

7-29 Scrutinized Companies.

For Contracts \$1,000,000 and greater, if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

SECTION 8 PROSECUTION AND PROGRESS

8-1 Subletting or Assigning of Contracts.

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Department with a copy of the subcontract. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract. The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

8-3 Prosecution of Work.

8-3.1 Compliance with Time Requirements: Commence work in accordance with the accepted working schedule and provide sufficient labor, materials and equipment to complete the work within the time limit(s) set forth in the proposal. Should the Contractor fail to furnish sufficient and suitable equipment, forces, and materials, as necessary to prosecute the work in accordance with the required schedule, the Engineer may withhold all payments that are, or may become due, or suspend the work until the Contractor corrects such deficiencies.

8-3.3 Beginning Work: Notify the Engineer not less than five days in advance of the planned start day of work. Upon the receipt of such notice, the Engineer may give the Contractor Notice to Proceed. In the Notice to Proceed, the Engineer may waive the five day advance notice and authorize the Contractor to begin immediately. Notify the Engineer in writing at least two days in advance of the starting date of important features of the work. Do not commence work under the Contract until after the Department has issued the Notice to Proceed. The Department will issue the Notice to Proceed within 20 calendar days, excluding Saturdays, Sundays and Holidays, after execution of the Contract.

8-3.4 Provisions for Convenience of Public: Schedule maintenance operations so as to minimize any inconvenience to adjacent businesses or residences. Where necessary, the Engineer may require the Contractor to first construct the work in any areas along the project where inconveniences caused by maintenance operations would present a more serious handicap. In such critical locations, where there is no assurance of continuous effective prosecution of the work once the maintenance operations are begun, the Engineer may require the Contractor to delay removal of the existing (usable) facilities.

8-3.5 Pework Conference: Immediately after executing the Contract but before the Contractor begins work, the Engineer will call a prework conference at a place the Engineer designates to go over the maintenance and management aspects of the project. Attend this meeting, along with the Department and the various utility companies that will be involved with the road maintenance.

8-3.6 Partnering: For this Contract, a no-bid Lump Sum pay item has been established for Partnering. The objective of Partnering is to establish a partnership charter and action plan for the Contractor, the Engineer and other parties impacted by the activities covered under this Contract to identify and achieve reciprocal goals. These objectives may be met through participation in a major workshop held as early as possible after the Contract is awarded and follow-up workshops held periodically throughout the duration of the Contract.

As early as possible and prior to the prework conference, meet with the Department's Contract Manager and plan an initial partnering/team building workshop. At this planning session, select a workshop facilitator, suitable to the Contract Manager, from the Department approved list of facilitators maintained by the State Construction Office. Additionally, the agenda, duration, location, time, and attendees for the initial workshop should be determined. Attendees should include the Department's District Maintenance Department Head and key project personnel, the Contractor's Superintendent and key personnel as well as other project or field level personnel.

Partnering workshops may be held periodically throughout the duration of the Contract if authorized by the Contract Manager.

The Department will reimburse the Contractor based on actual invoice amounts for the following costs associated with Partnering:

- a. Meeting room.
- b. Facilitator fees.
- c. Travel expenses of the facilitator, in accordance with Section 112.061, Florida Statutes.

The Department will not reimburse the Contractor for any other expenses. Payment will be the actual cost incurred to conduct such partnering meeting and shall be made by using the no-bid Partnering pay item established in the contract.

8-3.7 Disputes Review Board: For this Contract, a Maintenance Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the work on the Contract.

8-3.7.1 Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and

the Contractor in an effort to avoid contract delay and future claims.

It is not intended that the Department or the Contractor default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes or claims without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Claims that are referred to the Board must be in compliance with 5-12. It is a condition of this Contract that the parties shall use the Maintenance Dispute Review Board. The completed DRB hearing of any unresolved disputes or claims is a condition precedent to the Department or the Contractor having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law on such unresolved disputes or claims.

The recommendations of the Board will not be binding on either the Department or the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

8-3.7.2 Continuance of Work: During the course of the Maintenance Disputes Review Board process, the Contractor will continue with the work in a diligent manner and without delay or otherwise conform to the contract performance measures, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the disputes or claims.

8-3.7.3 Membership: The Maintenance Disputes Review Board will consist of the same members as established for the “Regional Disputes Review Board”, pre-selected by the Department and the President of the Florida Transportation Builders’ Association (FTBA), and posted on the Department’s Website.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Once established, the Board will remain active and in full force and effect. If, after contract time expires, there are unresolved disputes and claims remaining, the Maintenance Disputes Review Board shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

8-3.7.4 Procedure and Schedules for Disputes Resolution: Disputes and claims will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.

a. If the Contractor objects to any decision, action or order of the Engineer, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for

the objection, within 15 days after the event.

b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute or claim. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.

c. This decision will be final and conclusive on the subject, unless a written appeal to the Engineer is filed by the Contractor within 15 days of receiving the decision. Should the Contractor preserve its protest of the Engineer's decision, the matter can be referred to the Board by either the Department or the Contractor.

d. Upon receipt by the Board of a written duly preserved protest of a dispute or claim, either from the Department or the Contractor, it will first be decided when to conduct the hearing.

e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute or claim. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.

f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may present information at the hearing that was not previously distributed to both the Board and the other party.

g. The Board's recommendations for resolution of the dispute or claim will be given in writing to both the Department and the Contractor, within 15 days of completion of the hearings. In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. The Board will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. If both parties request, and sufficient documentation is available, the Board may make a recommendation of monetary damages.

h. Within 15 days of receiving the Board's recommendations, both the Department and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of either party to respond within the 15 day period will be deemed an acceptance of the Board's recommendations by that party. If the Department and the Contractor are able to resolve the dispute or claim with or without the aid of the Board's recommendations, the Department will promptly process any required Contract changes.

i. Should the dispute or claim remain unresolved, either party may seek reconsideration of the decision by the Board only when there is new evidence to present. No provisions in this Specification will abrogate the Contractor's responsibility for preserving a claim filed in accordance with 5-12.

Although both the Department and the Contractor should place great weight on the Board's recommendation, it is not binding. If the Board's recommendations do not resolve the dispute or claim, all records and written recommendations of the Board will be admissible as evidence in any subsequent dispute resolution procedures.

8-3.7.5 Contractor Responsibility: The Contractor shall furnish to each Board member a set of all pertinent documents which are or may become necessary for the Board, except documents furnished by Department, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are used in the performance of the work or in justifying or substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

Except for its participation in the Board's activities as provided in the

construction Contract and in this Agreement, the Contractor will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

8-3.7.6 Department Responsibilities: Except for its participation in the Board's activities as provided in the maintenance Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

a. Contract Related Documents: The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.

b. Coordination and Services: The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

8-3.7.7 Limitation for Referral of Disputes or Claims to the Board: Any disputes or claims that were not resolved prior to contract expiration of the project must be referred to the Board within 90 calendar days after contract expiration for projects with an original Contract amount of \$3,000,000 or less, and within 180 calendar days after contract expiration on projects with an original Contract amount greater than \$3,000,000. Only duly preserved disputes or claims will be eligible to be heard by the Board. Failure to submit all disputes or claims to the Board within aforementioned timeframe after contract expiration constitutes an irrevocable waiver of the Contractor's dispute or claim.

8-3.7.8 Basis of Payment: A per hearing cost of \$8,000 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. For each hearing, the Contractor shall compensate the Board chairman \$3,000 for participation in the hearing and will compensate the remaining two members \$2,500 each. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at \$3,300 per day, paid by the Contractor.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

The Department will reimburse the Contractor for Board expenses incurred if the findings of the Board are in favor of the Contractor. If the findings are in favor of the Department, the Department will not reimburse the Contractor for Board expenses incurred. If the Board rules on multiple issues during a single hearing, Department reimbursement to the Contractor is based on ratio of findings (e.g., if Board hears four issues, regardless of importance or value, and rules favorably for the Contractor on three of them, the Department reimburses Contractor for 75% of Board costs). Reimbursed payments to the Contractor shall be made by using the no-bid DRB pay item established in the contract.

8-4 Limitations of Operations.

8-4.1 Night Work: During active nighttime operations, furnish, place and maintain lighting sufficient to permit proper workmanship and inspection. Use lighting with 5 ft-cd minimum intensity. Arrange the lighting to prevent interference with traffic or produce undue glare to property owners. Operate such lighting only during active nighttime construction and maintenance activities. Provide a light meter to demonstrate that the minimum light intensity is being maintained.

Lighting may be accomplished by the use of portable floodlights, standard equipment lights, existing street lights, temporary street lights, or other lighting methods approved by the Engineer.

During active nighttime operations, furnish, place and maintain variable message signs to alert approaching motorists of lighted maintenance zones ahead. Operate the variable message signs only during active maintenance activities.

Take ownership of all lighting equipment for night work.

8-4.3 Interference with Traffic: At all times conduct the work in such manner and in such sequence as to ensure the least practicable interference with traffic. Operate all vehicles and other equipment safely and without hindrance to the traveling public. Park all private vehicles outside the clear zone. Place materials stored along the roadway so as to cause no obstruction to the traveling public as possible.

Where existing pavement is to be widened and stabilizing is not required, prevent any open trench from remaining after working hours by scheduling operations to place the full thickness of widened base by the end of each day. Do not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least ¼ mile along the road and where either the work of excavation has not been started or the base has been completed.

8-4.4 Coordination with other Contractors: Sequence the work and dispose of materials so as not to interfere with the operations of other Contractors engaged upon adjacent work; join the work to that of others in a proper manner, in accordance with the spirit of the Contract Documents; and perform the work in the proper sequence in relation to that of other contractors; all as may be directed by the Engineer.

Each contractor is responsible for any damage done by him or his agents to the work performed by another contractor.

8-4.5 Drainage: Conduct the operations and maintain the work in such condition to provide adequate drainage at all times. Do not obstruct existing functioning storm sewers, gutters, ditches, and other run-off facilities.

8-4.6 Fire Hydrants: Keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times, and do not place any material or obstruction within 15 feet of any fire hydrant.

8-4.7 Protection of Structures: Do not operate heavy equipment close enough to pipe headwalls or other structures to cause their displacement.

8-4.8 Fencing: Erect permanent fence as a first order of business on all projects that include fencing where the Engineer determines that the fencing is necessary to maintain the security of livestock and other animals on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property. Secure the right of way on Limited Access Facilities at all times by a fence, either temporary or permanent, that meets the height of the existing fence or the height required in the Contract.

8-4.9 Contaminated Materials: When the maintenance operations encounter or expose any abnormal condition that may indicate the presence of a contaminated material, discontinue such operations in the vicinity of the abnormal condition and notify the Engineer immediately.

Be alert for the presence of tanks or barrels; discolored or stained earth, metal, wood, ground water; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any contaminated materials into uncontaminated areas.

Dispose of the contaminated material in accordance with the requirements and regulations of any Local, State, or Federal agency having jurisdiction.

The Department may agree to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters contaminated materials or pollutants during the performance of services for the Department when the presence of such materials or pollutants were unknown or not reasonably discoverable. Such indemnification agreements are only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem. Such indemnification agreements are not valid for damages resulting from the Contractor's willful, wanton, or intentional conduct or the operations of Contaminated and Hazardous Material Contractors.

8-4.10 Equipment: Equip vehicles and mobile equipment used on the project with a minimum of one class 2 amber or white flashing light that meets the Society of Automotive Engineers recommended practice SAE J845 and SAE J1318. The Engineer may require a white flashing light meeting the above requirements when conditions reduce the effectiveness of amber light (i.e., at night under high intensity discharge lights such as sodium vapor).

Ensure all equipment safety devices recommended by the manufacturer are installed and properly maintained.

Park vehicles and equipment not in use or left on the right-of-way overnight as close as possible to the right-of-way line and always outside of the applicable clear zone. Conduct service and supply operations as close to the right-of-way line as possible. Do not park equipment in the median, regardless of the width of the median, unless movement from the work area is determined by the Engineer to be prohibitive.

8-5 Qualifications of Contractor's Personnel.

Provide competent, careful, and reliable superintendents, foremen, and workmen. Provide workmen with sufficient skill and experience to properly perform the work assigned to them. Provide workmen engaged on special work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Provide workmen that shall make due and proper effort to execute the work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.

It is prohibited as a conflict of interest for a Contractor to subcontract with a Consultant to perform Contractor Quality Control when the Consultant is under contract with the Department to perform work on any project described in the Contractor's Contract with the Department. Prior to approving a Consultant for Contractor Quality Control, the Contractor shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists.

Whenever the Engineer determines that any person employed by the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate, the Engineer will provide written notice and the Contractor shall discharge the person from the work. Do not employ any discharged person on the project without the written consent of the Engineer. If the Contractor fails to remove such person or persons, the Engineer may withhold all estimates that are or may become due, or suspend the work until the Contractor complies with such orders. Protect,

defend, indemnify, and hold the Department, its agents, officials, and employees harmless from all claims, actions, or suite arising from such removal, discharge, or suspension of employees.

8-6 Temporary Suspension of Contractor's Operations.

8-6.1 Authority to Suspend Contractor's Operations: The Engineer has the authority to suspend the Contractor's operations, wholly or in part. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department may grant an extension of Contract time in accordance with 8-7.3.2 when determined appropriate in the Department's sole judgment.

No additional compensation or time extension will be paid or granted to the Contractor when the operations are suspended for the following reasons:

- a. The Contractor fails to comply with the Contract Documents.
- b. The Contractor fails to carry out orders given by the Engineer.
- c. The Contractor causes conditions considered unfavorable for continuing the Work.

Immediately comply with any suspension order. Do not resume operations until authorized to do so by the Engineer in writing. Any operations performed by the Contractor, and otherwise constructed in conformance with the provisions of the Contract, after the issuance of the suspension order and prior to the Engineer's authorization to resume operations will be at no cost to the Department. Further, failure to immediately comply with any suspension order will also constitute an act of default by the Contractor and is deemed sufficient basis in and of itself for the Department to declare the Contractor in default, in accordance with 8-9, with the exception that the Contractor will not have ten calendar days to correct the conditions for which the suspension was ordered.

8-9 Default and Termination of Contract.

8-9.1 Determination of Default: The following acts or omissions constitute acts of default and, except as to subparagraphs (i and k), the Department will give notice, in writing, to the Contractor and his surety for any delay, neglect or default, if the Contractor:

- (a) fails to begin the work under the Contract within the time specified in the Notice to Proceed;
- (b) fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure prompt completion of the Contract;
- (c) performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work that the Engineer rejects as unacceptable and unsuitable;
- (d) discontinues the prosecution of the work, or fails to resume discontinued work within a reasonable time after the Engineer notifies the Contractor to do so;
- (e) becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
- (f) allows any final judgment to stand against him unsatisfied for a period of ten calendar days;
- (g) makes an assignment for the benefit of creditors;
- (h) fails to comply with Contract requirements regarding minimum wage payments or EEO requirements;
- (i) fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order; or
- (j) for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the Department.

(k) fails to comply with 3-9.

(l) fails to timely provide all required insurance policies and to keep the insurance policies in force and effect during the duration of the Contract.

For a notice based upon reasons stated in subparagraphs (a) through (h) and (j): if the Contractor, within a period of ten calendar days after receiving the notice described above, fails to correct the conditions of which complaint is made, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

If the Contractor, after having received a prior notice described above for any reason stated in subparagraph (b), (c), (d), (e), (f) or (h), commits a second or subsequent act of default for any reason covered by the same subparagraph (b), (c), (d), (e), (f) or (h) as stated in the prior notice, and regardless whether the specific reason is the same, then, regardless of whether the Contractor has cured the deficiency stated in that prior notice, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without any prior written notice to the Contractor and without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (i), if the Contractor fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order, the Department will, upon written certificate from the Engineer of the fact of such delay and the Contractor's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (k), if the Contractor fails to comply with 3-9, the Department will have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

The Department has no liability for anticipated profits for unfinished work on a Contract that the Department has determined to be in default.

Notwithstanding the above, the Department shall have the right to declare the Contractor (or its "affiliate") in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. The Department's right to default the Contractor (or its "affiliate") for "conviction" of a "contract crime" shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its "affiliate") that resulted in the "conviction." In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

8-9.2 Termination of Contract for Convenience: The Department may terminate the entire Contract or any portion thereof, if the Secretary determines that a termination is in the Department's interest. The Secretary will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.

When the Department terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the Department will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started.

The Department will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

The Department may purchase at actual cost acceptable materials and supplies procured for the work, that the Department has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Engineer may designate.

Termination of a contract or a portion thereof, under the provisions of this Subarticle, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the Contract or its obligations for and concerning any just claims arising out of the work performed.

All Contractor claims for additional payment, due to the Department's termination of the entire Contract or any portion thereof, must meet the requirements of 5-12.

8-9.3 Completion of Work by Department: Upon declaration of default, the Department will have full power to appropriate or use any or all suitable and acceptable materials and equipment on the site and may enter into an agreement with others to complete the work under the Contract, or may use other methods to complete the work in an acceptable manner. The Department will charge all costs that the Department incurs because of the Contractor's default, including the costs of completing the work under the Contract, against the Contractor. If the Department incurs such costs in an amount that is less than the sum that would have been payable under the Contract had the defaulting Contractor completed the work then the Department will pay the difference to the defaulting Contractor. If the Department incurs such costs in an amount that exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay the State the amount of the excess.

If, after the ten day notice period and prior to any action by the Department to otherwise complete the work under the Contract, the Contractor establishes his intent to prosecute the work in accordance with the Department's requirements, then the Department may allow the Contractor to resume the work, in which case the Department will deduct from any monies due or that may become due under the Contract, any costs to the Department incurred by the delay, or from any reason attributable to the delay.

8-11 Release of Contractor's Responsibility.

The Department considers the Contract complete when the Contractor has completed all work and the Department has accepted the work. The Department will then release the Contractor from further obligation except as set forth in his bond, and except as provided in 5-13.

8-12 Recovery of Damages Suffered by Third Parties.

Pursuant to Section 337.18 of the Florida Statutes, when the Contractor fails to complete the work within the Contract Time or within such additional time that the Department may grant the Department may recover from the Contractor amounts that the Department pays for damages suffered by third parties unless the failure to timely complete the work was caused by the Department's act or omission.

SECTION 9 MEASUREMENT AND PAYMENT

9-2 Scope of Payments.

9-2.1 Items Included in Payment: Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the end of the original contract period or subsequent renewal periods; also for all other costs incurred under the provisions of Division I.

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

9-4 Deleted Work.

The Department will have the right to cancel the portions of the Contract relating to the construction or maintenance of any acceptable item therein, by making an adjustment in payment to the Contractor of a fair and equitable amount covering the value of all cancelled work less all items of cost incurred prior to the date that the Engineer cancels the work.

9-5 Partial Payments.

9-5.2 Unsatisfactory Payment Record: In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory.

9-5.3 Withholding Payment:

9-5.3.1 Withholding Payment for Defective Work: If the Department discovers any defective work or material prior to the end of the original contract period or subsequent renewal periods, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to the end of the original contract period or subsequent renewal periods, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

9-5.3.2 Withholding Payment for Failure to Comply: The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

(a) comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, , and Affirmative Action;

(b) comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;

(c) comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and

The Department will withhold progress payments until the Contractor has satisfied the above conditions.

9-5.6 Certification of Payment to Subcontractors: The term "subcontractor," as used herein, includes persons or firms furnishing materials or equipment incorporated into the

work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor's work. Provide this certification in the form designated by the Department.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period.

The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

9-7 Disputed Amounts Due the Contractor.

The Department reserves the right to withhold from the final invoice any disputed amounts between the Contractor and the Department. The Department will release all other amounts due, as provided in 9-8.

9-8 Acceptance and Final Payment.

9-8.1 Acceptance and Final Payment Documents If the Contractor fails to furnish all required Contract Documents as listed in (a) through (c) below within 90 days of the Contractor's submittal of a final invoice, the Department may suspend the Contractor from bidding under the provisions of Florida Administrative Code 14-22. Submit a final invoice in accordance with ME009-2.1 for work completed and accepted by the Department. The Department will pay the estimate, less any sums that the Department may have deducted or retained under the provisions of the Contract, provided the Contractor has met the requirements of (a) through (c) below.

(a) The Contractor has performed the work and properly maintained the project, as specified in the contract documents.

(b) The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any, and that the contractor will commence any such arbitration claim or suit within 820 calendar days from and after the time all work is completed and accepted by the Department, and that failure to file a formal claim within this period constitutes acceptance of final payment) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7-13.

(c) The surety on the Contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of his portion, to final

payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.

9-9 Interest Due on Delayed Payments.

The Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.

9-10 Offsetting Payments.

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is hereby made a part of this Contract:

(1) After settlement, arbitration, or final adjudication of any claim of the Department for work done pursuant to a construction or maintenance contract with any party, the Department may offset such amount from payments due for work done on any construction or maintenance contract, excluding amounts owed to subcontractors, suppliers, and laborers, which it has with the party owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department.

(2) Offsetting any amount pursuant to (1) above shall not be considered a breach of Contract by the Department.